

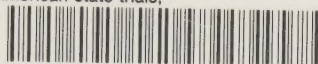
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AMERICAN STATE TRIALS

A Collection of the Important and Interesting Criminal Trials which have taken place in the United States, from the beginning of our Government to 1920.

WITH NOTES AND ANNOTATIONS

JOHN D. LAWSON, LL.D.

VOLUME VI

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Manufactured in the United States of America

TO
RICHARD HENRY JESSE, LL. D.

IN MEMORY OF THE YEARS IN WHICH IT
WAS MY FORTUNE TO BE HIS COLLEAGUE;
AS A TRIBUTE TO HIS SCHOLARSHIP AND
SPLENDID SERVICE IN BEHALF OF HIGHER
EDUCATION WHILE PRESIDENT OF THE UNI-
VERSITY OF MISSOURI, AND AS A TOKEN
OF A FRIENDSHIP THAT HAS ENDURED FOR
A QUARTER OF A CENTURY, I GLADLY DEDI-
CATE THIS VOLUME.

PREFACE TO VOLUME SIX.

The conviction of *Twitchell* (p. 1) for the murder of his mother-in-law was undoubtedly right, for if his *ante mortem* statement in which he threw the blame on his wife, were not sufficient, his suicide may well be taken as a final confession of his guilt. But what of Mrs. Twitchell, the daughter of the victim and certainly the accomplice if not the instigator of the crime?

The law against duelling easily reached a humble and ridiculous challenger like *John Wood* (p. 68), though it was absolutely impotent when it confronted men in high places, such as Aaron Burr, who killed Hamilton, and Senator Benton, who killed Lucas. This medieval custom (which was not without its good side, as was pointed out by counsel in the Trial of Wilkinson, 1 Am. St. Tr.) died a natural death in the United States about the middle of the nineteenth century, not on account of legislative enactments, but because public opinion came at last, with practical unanimity, to condemn it.

In the history of Judicial Blunders, the conviction of the *Boorns* (p. 73) remains, after the lapse of a century, the leading case in the United States. An ignorant and half-witted farm laborer disappears from a rural community. There is nothing strange in this, for he was a shiftless fellow, and the incident has been quite forgotten, when seven years later somebody dreams three nights in succession that Colvin, the missing man, came to his bedside, told him he had been murdered and led him to the spot where he had been buried. A small boy is out walking with his dog when the animal begins to dig up the earth near the root of

a tree and will not desist until his master comes up and discovers some bones under his paws. A barn near the place, belonging to the Boorns, is burned to the ground. People begin to talk; to remember many things; that Colvin was a brother-in-law of the Boorns; that they resented his living on them; that they often quarreled and that they had been heard to say that they were glad he was gone for good. Suspicions grow from day to day; the dream becomes a reality to the country folk; the bones are surely those of Colvin; the barn was burned because under it the body was concealed and Jesse Boorn, who is at home, and his brother Stephen, who has been at work for years on a farm two hundred miles away, are lodged in jail and charged with his murder. At first they persist that they are innocent, but when they see that everybody believes them guilty and that they have no way of proving their innocence, and are told that to confess it all is the only way to save their lives, they finally admit that they are guilty and Stephen makes a written statement in which are given all the details that are wanted. They are tried, and largely on the fact of their confessions, they are convicted and sentenced to be hanged. The Legislature rejects their petition, and Stephen is all ready for the scaffold, when lo! through a chance advertisement of the case, which had been copied into a New York newspaper, Colvin appears on the scene, brought from New Jersey, where he has been working for many years. The pen of a spectator thus describes the joy of the community at its escape from a judicial murder and the triumphal procession of the supposed victim from the borders of the state to his old home.

"On the 22nd of December, Colvin arrived in the State with Mr. Whelpley at Bennington. The County Court being then in session, all

were filled with astonishment and surprise. The Court suspended business for some hours, to gaze upon one who in a sense had been dead, and alive again. Many who formerly knew him, now saw that there could be no deception: Russel could call many of them by name. Toward evening, the same day, he came to Manchester; Notice being given that he was near at hand, a cry was heard, '*Colvin has come!*' The stage was driven swiftly, and a signal extended. It was all bustle and confusion. The stage stopped at Capt. Black's Inn. The village was all alive; all were running to obtain sight of the man, who, they had no doubt, was dead, and had come as a kind of savior to one who was devoted to the gibbet. Some, like Thomas in another case, would not believe without tangible evidence. People gathered around him with such eagerness, as to render it impossible to press through the crowd, or obtain a sight of him. Almost all his old acquaintances he could recognize, and called them by name. Several guns were discharged for joy; people ran to different parts of the town to give notice. The prison door was unbolted, the news proclaimed to Stephen that Colvin had come! The welcome reception given it by the joyful prisoner, need not be mentioned. The chains on his arms were taken off, while those on his legs remained; being impatient of an interview with him who had come to bring salvation, they met. Colvin gazed upon the chains and asked, What is that for? Stephen answers, Because they say I murdered you. Russel replied, You never hurt me. His wife and friends and people from every part of the town were collected—joy and gladness sat on every countenance. Many shouts of rejoicing were heard together with the discharge of cannon. The news having been spread, that Colvin had come to Manchester, the next day there was a large collection from the neighboring towns, who met to behold the returned exile, and to express their high satisfaction on the occasion. I think I can say that I scarcely ever saw more exultation and tender sympathy on any occasion. Not less than fifty cannon were discharged, and at a seasonable hour they returned to their places of abode."

And on next Lord's Day the Reverend Lemuel Haynes, A. M., preached a sermon in the town meeting house on the "remarkable interposition of Divine Providence," in which he pointed out that the

"Imperfections incident to all men and all courts of judicature, render them liable to wrong verdicts. The most prudent and experienced cannot plead exemption. The innocent may be condemned, and the guilty go with impunity. But the great searcher of hearts cannot be deceived. Every decision is dictated by infinite wisdom

and infinite goodness: he can by no means clear the guilty or condemn the innocent. God will judge the people with perfect equity, and justice and judgment are the habitation of his throne. Psal. 89:14."

The parson even ventured to tell the Court that it had perhaps neglected to observe some of those ancient rules, which the law had established for the protection of the innocent.

"Perhaps in no case were circumstantial evidence more clear and conclusive, or greater unanimity in court and jury, or coincidence in the public mind. But few who did hesitate to bring in their verdict of Guilty. The wisdom, candor and integrity of the board of trial cannot be questioned. Neither are we disposed to impeach the witnesses in general. Even the prisoner himself had confessed the crime, and after all we are assured that they are innocent. It may prove a caution to us to look as favorable as possible on the side of innocence, and to the exercise of that charity that 'hopeth all things,' and not be too hasty in taking up a reproach against our neighbor. Psal. 15:3. Courts of judicature are hereby taught to proceed with the utmost deliberation and carefulness, especially in cases of life and death, and not decide without very clear and conclusive evidence. How far the opinion of our first commentaries on law ought to be regarded, is out of the preacher's province to determine; but a point to be discussed by gentlemen of the bar. 'All presumptive evidence of felony should be admitted cautiously (says Blackstone), for the law holds that it is better that ten guilty persons escape, than that one innocent suffer.' And Sir Matthew Hale in particular, lays down two rules most prudent and necessary to be observed. '1. Never to convict a man for stealing the goods of a person unknown, merely because he will give no account how he came by them, unless an actual felony be proved of such goods. 2. Never to convict any person of murder or manslaughter till at least the body be found dead;' on account of two instances he mentions, where persons were executed for the murder of others who were then alive, but missing."

"Mind your own business" is an old maxim, which would have kept *Farquhar* (p. 96) both out of trouble and out of the criminal courts, had he remembered and followed it.

In the days when a wife who murdered her husband was likely to receive a fit punishment, poison was the

means most often resorted to, when it was decided to get rid of a superfluous spouse. The trial of *Lucretia Chapman* (p. 99) is a valuable one, for it presents a very exact and elaborate picture of the scientific knowledge of the day, concerning the detection in and effect on the human body, of poison. A close reading of the evidence after the lapse of three quarters of a century, leaves some doubt as to her guilt, of which the jury gave her the benefit. The contemporary records show, however, that the verdict was, in effect, the Scottish one of "not proven," for the woman after her acquittal became, like Mrs. Cunningham (see 5 Am. St. Tr.), an outcast from society, wandering through the country with her children giving some kind of a theatrical exhibition for a livelihood.

Her little daughter *Lucretia's* idea of the judicial oath (p. 188) recalls Mr. Justice Maule, the witty English judge, whose celebrated judgment in a bigamy case was referred to in a former volume. (Trial of Van Pelt, 2 Am. St. Tr.) A boy of seven years was called in a murder case as a witness for the prisoner, whereupon the following amusing colloquy was had between counsel, witness and judge.

The Crown Counsel. Boy, do you know the nature of an oath?

Boy. No, sir.

The Crown Counsel. Do you know it is wicked to tell lies?

Boy. Yes, sir.

The Crown Counsel. Do you know what becomes of people who tell lies, when they die?

The Boy. Yes, sir.

The Crown Counsel. I don't think, my lord, it would be safe to swear him. He does not seem to know anything about religion at all.

Mr. Justice Maule. I think he shows an unusual knowledge. He says he knows where people, who tell lies, go after they die. That is a good deal more than I know. Now my boy let me ask you a question or two. You have been asked about a future state. I should like to know what you have been taught to believe will become of

you, my little boy, when you die, if you are so wicked as to tell a lie.

The Boy. Hell fire.

Mr. Justice Maule. Right. Now let us go a little further. Do you mean, my boy, that you would go to hell fire for telling any lie.

The Boy. Hell fire, sir.

Mr. Justice Maule. Take time, my boy, don't answer hurriedly. Think it over. Suppose now you were accused of stealing an apple, how would that be in the next world, think you?

The Boy. Hell fire, my lord.

Mr. Justice Maule. Very good indeed. Now let us suppose that you were disobedient to your parents, or to one of them, what would happen in that case?

The Boy. Hell fire, my lord.

Mr. Justice Maule. Exactly, very good, indeed. Now let me take another instance and suppose that you were sent for the milk in the morning and took just a little sup while you were carrying it home.

The Boy. Hell fire, my lord.

The Crown Counsel. I suggest, my lord, that the lad's absolute ignorance of the nature of an oath renders him incompetent.

Mr. Justice Maule. I don't know about that. He seems to be very sound and most divines will tell you he is right. I think he is a very good little boy. He thinks that for every wilful fault he will go to hell fire, and he is very likely, while he believes that doctrine to be most strict in his observance of truth. If you and I believed that such would be the penalty for every act of misconduct we committed we should be better men than we are. Let the boy be sworn.¹

The complaint made by the Commonwealth's attorney, Mr. Reed, that the defense had not put on the witness stand certain persons whose knowledge would have cleared up some debatable points, presents a peculiar aspect of a criminal trial as conducted in American courts. Said Mr. Reed (p. 254):

"A child (Lucretia) is produced here to discredit the evidence of Ann Bantom. It is for you to decide between them. The evidence, if it affects them at all, strengthens the testimony of all the others. It is incumbent on a party striving to discredit testimony, to do it by the best evidence which can be produced, and when we are asked on the isolated evidence of this little girl, to attribute perjury to a respectable witness, I meet it by the inquiry, why is not Mary Chap-

¹ Reminiscences of Sir Henry Hawkins, Baron Brampton.

man produced, who would be a better witness, who knew more of this transaction, and who is now a resident in this town? I deny the right of the prisoner thus withholding better evidence than she has produced, to charge our witnesses with perjury, on the unsupported testimony of a single witness, and that witness her infant daughter. Mary Chapman, according to Lucretia's evidence, brought the soup upstairs from the parlor; she was of an age which gave her opportunities of observation; she was with the family all the time Mina was there; and she was the companion of her mother's flight. Why is she not produced? Why is Mrs. Green not produced? She is within easy reach of a subpoena. She could tell what passed at Syracuse, when she and the prisoner sat up all night talking about the prisoner's 'pretty little husband.' She could explain the mysterious interview at Andalusia, after Mina's return from Washington. There are other witnesses, too, within the prisoner's control, equally important, and all, with the exception of the little girl, have been studiously withheld. This certainly is not consistent with the theory of innocence, of candor and propriety."

But if this evidence was so essential to get at the truth of the matter, why were not these witnesses summoned and examined by Mr. Reed himself, or if not by him, then by the Judge? This would be a very natural question to ask, but such a question would reveal at once, that the layman who should put it, was entirely ignorant of the object of a trial by jury in the United States. People who watch a trial in their court house at home with the Judge on the bench, the jury in their seats, the counsel and witnesses in their places, and the public as spectators, are very apt to think that what is taking place is an investigation as to the guilt or innocence of the prisoner at the bar. But this is where the public is mistaken, for it is nothing of the kind. The rules of procedure and of evidence, which bind the tribunal hand and foot, forbid any such idea. As a former president of the United States, Mr. Taft, once pointed out, if a mother should find that a pie had disappeared from her cupboard and that the children had been in the neighborhood a

short time before, her natural and sensible question would be "which of you took that pie?" and to insist on an answer. But American criminal procedure will not permit such a question to a suspected thief; it allows him to stand mute, and to refuse to say anything to help out the truth. In short, a criminal trial in the United States is a game like football or baseball, with the State's representatives on one side and the prisoner's on the other, with the Judge as umpire and with the jury in the grand stand to acclaim the victor or hoot the vanquished.

The prosecuting attorney, if he fails to get a conviction, considers the verdict a real defeat; the lawyers for the defense show, in every move, that they are fighting for a verdict of not guilty by every means in their power. Each side must follow certain prescribed rules which the Judge is there to enforce, and if the Judge makes a mistake in interpreting the rules, there is a Supreme Court which will set the whole proceedings aside and order the game to be played over. The State opens the case, calls its witnesses, which have been carefully instructed beforehand; then the defense brings on its witnesses, who have been still more carefully coached; then the attorneys on both sides make their speeches, and the flood of oratory being over, the Judge proceeds to tell the jury the law of the case, in terms which they hardly comprehend. If the verdict is not guilty, that is the end of it; if it is guilty, then comes a long struggle in the appellate court as to the Judge's interpretation of the rules of the game.

How different is a trial in a country where Anglo-American jurisprudence is unknown. In France, for example, when a crime is committed, the State begins at once an investigation to discover the culprit. An examining magistrate summons before him and exam-

ines every one who can possibly give any information; this examination and all the witnesses are then sent to a trial court where the suspected person is interrogated by the Presiding Judge and is expected to tell all he knows. The witnesses are examined before the jury by the Judge, not by the lawyers; none of them are called as witnesses for the State or for the prisoner; they are not arrayed on different sides, but are called in the order that the Judge determines, and if he knows of any other evidence in existence, it is his duty to see that the witnesses are brought into court. No such complaint as Mr. Reed made could be possible in a Continental Court, for at the mere hint that there was other evidence to be had, the witnesses would be sent for by the Presiding Judge and examined by him with the greatest care.

That William Chapman was murdered there was little doubt; somebody must be punished for it, and so the public found the scapegoat in the poor young Mexican, *De Mina* (p. 397), though the evidence was no stronger against him than it was against Mrs. Chapman. But one was a good looking woman; the other a friendless alien. Suppose that his story was true—and was he likely to lie on the threshold of eternity?—what a miscarriage of justice these two trials exhibit!

Posterity can never excuse the treachery of *Benedict Arnold*; but it is well to read at this day the evidence given at the Court Martial (p. 411), which Washington so reluctantly granted to his enemies, for it cannot but evoke a great sympathy for a man whose services to his country were forgotten, through the enmity which succeeded at last in humiliating him. How petty the charges were and how lax must have been the discipline of the Continental Army is seen in the second of the charges, viz., “imposing menial of-

fices on the sons of freemen." Think of a general in any army in the present war being haled by civilians before a court martial because he had declared that it was the duty of a soldier to obey every order of a superior officer without questioning their propriety. The court martial, on any of the charges, could find him guilty only of a little imprudence and Washington's gentle reprimand showed that the great commander did not forget his comrade's bravery and had full confidence in his friend's honor. But, unlike Washington, tried by both extremes of fortune but never disturbed by either, Benedict Arnold was to sacrifice his country to revenge himself on his enemies, and to exhibit to history a career of ambition without virtue, of glory tarnished with crime and of depravity ending in infamy.

The death on the gallows of *Major André* (p. 464) was one of the most tragic events of the Revolutionary War; his fate was deplored by those who had condemned him, and whose cause he had sought to ruin. No American can read this portion of our history without deep regret that the sacrifice was deemed necessary; no Englishman, who reads it impartially, can assert that the whole proceedings were not conducted by the strict laws of war. That Major André was a spy, his own admissions conclusively proved; and by the martial code, then as today, a spy must suffer death in its most ignominious form.²

The real connection of *Joshua H. Smith* (p. 486) with Benedict Arnold and his conspiracy has never been satisfactorily explained. It is almost impossible to believe that a man of his intelligence did not suspect something wrong, and his narrative written many

² Chandler Am. Trials 179.

years afterwards strengthens the impression that he was not acting in good faith. His troubles, however, did not end with his trial. He avers in his narrative that he was not informed of the decision of the court martial until long after it was given, but was kept in constant suspense as to his fate, for many months. The papers were transmitted by Washington to the Government of New York, that Smith might be tried by a civil process under the law of the State of New York, should such a course be deemed advisable. He was subsequently taken into custody by the civil authority of the State, but after being confined in jail several months, he found means to escape, by the assistance of his wife, and after various adventures, sometimes disguised in a woman's dress, he reached the city of New York, then in possession of the British. At the close of the war he went to England, but returned to New York City, where he died.³

A grewsome tragedy was that of the *Reverend George Carawan* (p. 514). A murder for revenge, followed by flight, pursuit, trial and condemnation and then hari kari in open court. The cloth will not often be a central figure in these volumes, but in the Editor's Library of Criminal Law and Criminology there is a curious volume published over thirty years and entitled "The Crimes of Preachers." The author is certainly not a friend of the clergy, for he boldly states that his object is to show that preachers as a class are more criminal than any other class of people. The editor can assure the public, as well as the profession, that this is absolutely untrue, though no one has yet appeared with such a special antipathy against any other profession or calling as to give to the world a

³ Chandler Am. Tr. 265.

volume on the Crimes of Lawyers or Physicians or Grocers.⁴

Stephen Clark (p. 597) was certainly the youngest person ever hanged in the United States. And that his tender age made small appeal to the humane sensibilities of the people among whom he lived, is shown in the comment on his conviction made at the time in a local pamphlet where the writer says:

"When an old criminal is convicted such wretches we yield to the executioner without much more regret than when we witness the extermination of a beast of prey, because we usually find in their history little else than one unbroken continuity of crime and guilt, whole lives of felony, hands reeking with blood and familiar with murder. The sufferings of such, at the moment of their extremity may indeed prompt a tear of pity, but not one aspiration for mercy. If nature breathes a sigh it is for her own degradation by such monsters in her shape, and we consign them to a murderer's grave satisfied that justice has only done her lone protracted work; that society is made safer by the excision of diseased members, property less exposed to spoliation and human life rescued from incipient folly and flagitious crime. There are many gradations and strong restraints. There is a fear of consequences to be quelled; a moral sense to be indurated; disgrace and infamy to be defied; and the whole force of education to be overcome, before the culprit can have been disciplined to stand, unmoved, on the brink of that gulf, into which his projected crime may instantly plunge him. When, therefore, a youth of only seventeen years, with all these terrors to repel, and all these restraints to stay his hand, has leaped almost at once from the impotence of childhood, into the deep damnation of hoary iniquity, and the abyss of death, an interest is excited far more intense than what is ordinarily felt in the last retributions of justice."

Some interest here, but no sympathy! And the writer concludes:

"Long may it be ere another instance of such precocious depravity shall stain our records or so youthful a victim bleed on the altar

⁴ *The Crimes of Preachers, in the United States and Canada*. Second edition. Translated out of the original newspapers and with previous translations diligently compared and revised. By M. E. Billings, New York. D. M. Bennett, 1882.

of justice. Long may it be ere the sensibilities of our citizens shall be shocked by an appeal to their humanity which seemed for a moment almost too strong for the sense of duty, and more than half prompted the wish to unclench the grasp of justice and give impunity to guilt of the blackest dye."

Consider for a moment the crime and the criminal. He set fire to the hay in a stable and though the fire spread to several dwellings and much property was destroyed, not a single life was lost. But the Chief Justice of Massachusetts told the jury:

"By a law of this commonwealth, the facts necessary to constitute the crime of arson are the wilful and malicious burning of the dwelling house of another in the night time, or the setting fire to any other building in the night time, by means of which the dwelling-house of another is burnt. Perhaps no one will doubt that if ever the punishment of death should be inflicted, it should be for an offense of this kind. No crime can be conceived more dangerous in its consequences or indicating greater malice. In the case of a single murder, the consequences terminate in itself. The life of one person is destroyed, but the rest of the community suffer no direct injury. But in the setting fire to a dwelling-house during the defenseless hours of the night, and especially in a populous town, there is not only danger of vast destruction of property, but of the loss of multitudes of lives; and the peace and security of the whole community is at risk. If ever it is right for the Government to take the life of a subject, it is in such a case."

And it was in these words that the Chief Justice addressed the boy in sentencing him to the gallows:

"If there be a wretch, who, more than others, deserves the appellation of "enemy of the human race," it is he who is thus described. Murder, robbery, piracy, fall, in the black catalogue of crimes, below the crime of arson. They have determinate objects, are linked in extent, and incited by passions which may be considered human. This is boundless in its consequences; property is the least of its expected victims; the malice of a demon, unassisted by supidity, by particular revenge, or by any of the frail passions which usually lead to crime, is its sole instigator. It is then the right, nay, the duty of society, to cut off from the earth, by ignominious death, him who would involve his fellow creatures in such indiscriminate destruction. Young man! it is you, whose sad picture has thus been exhibited."

There was evidently not a single person in that community to point out and nobody seemed to remember that the boy had been brought up without restraint and without advice; that he had run the streets at will; that his associates had all been evil, with none to care what became of him! Certainly Society in the year 1821 did not regard very highly its duties to the youth of the Commonwealth.

And *Stephen Russell* (p. 671), with his friend Crockett, went to his death a dozen years later in Boston, for a similar act. Public opinion still regarded arson as one of the highest crimes in the calendar.

The prosecution in the Pennsylvania Supreme Court (p. 675) is the only instance, says Dr. Wharton, where the notorious journalist, *William Cobbett*, achieved anything like a triumph, though in the opinion of the Historian, McMaster, Cobbett was of all the pamphleteers of that time in America, the most sarcastic, the most entertaining and the most successful. The charge of Chief Justice McKean was so unfair and malicious that no fair-minded grand jury would be likely to have indicted him, merely to please the Court, but the verdict was a political one, the jurors voting for or against the indictment according to their political colors—all the Democrats for a true bill and all the Federalists for no bill. His escape, however, emboldened him to attack Pennsylvania's greatest and most beloved citizen, Benjamin Franklin, and to write of him in the following terms, in a venomous article on his grandson and heir, who, as a political opponent, had incurred his ill will: "Everyone will, I hope, have the goodness to believe that my grandfather was no philosopher. Indeed, he was not. He never made a big lightning-rod, nor bottled up a quart of sunshine in his life. He was no almanac maker, nor quack, nor

chimney doctor, nor soap boiler, nor ambassador, nor printer's devil. Neither was he a deist, and all his children were born in wedlock. The legacies he left were his scythe, his reaphook and his flail. He bequeathed no old and irrevocable debts to an hospital. . . . He has, it is true, been suffered to sleep quietly beneath the greensward; but if his descendants cannot point to his statue over the door of a library, they have not the mortification to hear him daily accused of having been a profligate, a hypocrite and an infidel."

This was too much; he had already, in another case, been bound over as a common libeler and now he was sued on his recognizances. A verdict of five thousand dollars was rendered against him, and to save himself from prison he fled to England, where he soon brought out a large work in 12 volumes, containing those "Porcupine Letters" which he considered the most racy in style and the most anti-republican in doctrine. The work, says Wharton, sold wonderfully well in England from the hatred of democracy, and still better in America, from the love of scandal. This éclat stimulated the author to a parallel commentary on the morals and manners of his own countrymen, and the result was that in 1810 he was sent to Newgate for a year and fined a thousand pounds. He abused all sides; abused the Tories, and was imprisoned by them; abused the radicals and was mobbed by them; was first the bitter denouncer of Napoleon, and then his retained advocate; first wrote down Parliamentary reform, and then wrote it up; and at last, when the reform bill had passed, got into the House of Commons. His genius, however, was not parliamentary; his unrivaled talents for abuse were not available in the new arena; he sank at last, after a few attempts at

invectives, into a speaker of the statistical school, dull, persevering and voluminous, and at last, in June, 1835, died in his 71st year, after a decline brought on by fatigue and disappointment.⁵

The Alien and Sedition laws are usually named together, for the reason that they were passed at the same time and their object was the same. For their enactment there was sufficient provocation; no one, who has not waded through the political literature of the closing years of the Eighteenth Century, can form any conception of the depths of falsehood, of knavery, of calumny and of shameful abuse to which it is possible for writers of pamphlets and editors of newspapers to descend. And the most scurrilous of the writers were emissaries of or exiles from foreign lands, like William Cobbett.⁶ So the Alien act gave the President power to banish from the country, without giving any reason and without a trial, any alien whom he considered a dangerous person, and the Sedition act put every editor and writer under the thumb of the Government. It took only a few prosecutions like those of *Lyon* (p. 687), and *Haswell* (p. 695), to raise a great cry throughout the country, and from the day the laws began to be enforced the party responsible for them went steadily down to ruin. At the next Presidential election Adams, who had approved the laws, was defeated by Jefferson, who had denounced them.

The Harper's Ferry Raid is one of the most striking and momentous events in American History. John Brown was not only a fanatic, but an insane fanatic. With only a score of followers he went into the most populous and educated of all the Slave States, to lead a servile insurrection, expecting the blacks to flock by

⁵ Wharton State Tr.

⁶ McMaster Hist. People U. S.

thousands to his standard. But they all refused to leave their homes or to take up arms against their masters, and those who were taken by force deserted him, as soon as they were able to do so. It was an ill omen indeed for the army of liberation that the first man that it killed was neither a slaveholder nor a defender of slavery, nor one who suffered by it, but a highly respected and well-to-do negro, in full possession of his liberty and treated with respect by the white community.⁷

In the South, Brown was, of course, denounced as the blackest of criminals, and although by the extreme Northern Abolitionists he was hailed as a saint and a martyr, yet most of the people of the non-slaveholding States recognized that morally his scheme was suicidal folly and that in the eye of the law it was treason and murder. We are concerned here in the trial of *John Brown* (p. 700) and his white associates, *Coppoc* and *Cook* (pp. 806, 814), not with its political, but only with its legal side. That all the judicial proceedings were conducted fairly, calmly and according to law, the record which is presented in the one hundred and sixty-four pages of this volume abundantly proves. At the very seat of the outrage, and among the people whose homes had been invaded and whose neighbors had been slain, there was no denial to the accused of any right to which the most careful judicial procedure could entitle a criminal; they were accorded the assistance of able and zealous counsel, not only from the bar of the State whose sovereignty had been attacked, but from the hostile ranks of the supporters and worshipers of the raid; abundant time was given them to produce their evidence; more than one Vir-

⁷ Shephard Hayward, p. 705,

ginian came voluntarily to the witness stand to testify so far as was possible in favor of the accused,⁸ and the Judge in all his rulings was most active in safeguarding their rights under the law. When the verdict of guilty had been rendered, John Brown rose in Court to declare among other things that he was entirely satisfied with the treatment he had received in the trial, and that it had been more generous than he had looked for. And the leading Northern Advocate, Senator Voorhees, the one great orator in the forensic struggle, wrote thirty years after to a friend:

"If justly represented by the pen of the historian, it will pass into history, as the most temperate and conservative judicial tribunal convened, when all the surrounding circumstances are considered. With perfect calmness, forbearing patience and undisturbed adherence to the law as known and decided throughout generations, that court arises upon my mind with increased and increasing claims to the respect and veneration of the American people and of the world."⁹

A considerable amount of fiction has gotten into the history of these trials. John Brown did not go to his death seated on his coffin, nor did he stop on his way to kiss a negro child, as has been depicted on canvas and made the subject of a poem. But there were many moments from the attack on the armory to the last scene on the field of death, which are worthy of the pencil of the artist, and may well illuminate the pen of the historian. For the young lieutenant, who, in the early morning, went forth to demand the surrender of the band of raiders, was in a few short years to become the cavalry leader—the Murat—of the Confederacy, and the colonel of engineers, whose orders he was carrying, and who stood on an eminence near by to give the signal for the attack, was to be known

⁸ See testimony of Captain Sinn, p. 771.

⁹ D. W. Voorhees to Miss Hunter, Jan. 7, 1889.

for all time as one of the great military commanders of the world. And in the crowd of soldiers and citizens who stood at the foot of John Brown's scaffold, were two men whom history will ever love to fondly praise and fiercely execrate. For at the head of the cadets of the Lexington Military Institute, stood Professor Thomas J. (Stonewall) Jackson, and in one of the companies of militia walked John Wilkes Booth.¹⁰

The Boston lawyer whom the Northern Abolitionists sent to Virginia to defend the two negroes, *Copeland* and *Green* (p. 809), who had killed Southern men, could not do very much for his clients, though his contention, that a negro could not be convicted of treason, was agreed to by the Court. Virginia law would hardly dignify a black with this high crime, but they were both convicted and hanged for murder on the clearest of evidence.

The conviction of *How* (p. 865) is a valuable illustration of the weight of circumstantial evidence. The confession of the prisoner, of course, made it certain, but without this, when all the facts fit together, as they did here, there could be no reasonable doubt of the correctness of the jury's decision.

¹⁰ Leech, *ante*, p. 710.

TABLE OF TRIALS.

	PAGE
<i>The Trial of GEORGE S. TWITCHELL for the Murder of MARY E. HILL, Philadelphia, Pennsylvania, 1868.</i>	1
<i>The Trial of JOHN WOOD for Sending a Challenge to a Duel, New York City, 1818</i>	68
<i>The Trial of STEPHEN and JESSE BOORN for the Murder of RUSSEL COLVIN, Bennington, Vermont, 1819</i>	73
<i>The Trial of WILLIAM FARQUHAR and JOHN H. CLARK for Assault and Battery, New York City, 1816</i>	96
<i>The Trial of LUCRETIA CHAPMAN for the Murder of WILLIAM CHAPMAN, Andalusia, Pennsylvania, 1832</i>	99
<i>The Trial of CAROLINO DE MINA for the Murder of WILLIAM CHAPMAN, Andalusia, Pennsylvania, 1832</i>	397
<i>The Trial of MAJOR GENERAL BENEDICT ARNOLD for Certain Misdemeanors, Raritan, New Jersey, 1779</i>	411
<i>The Trial of MAJOR JOHN ANDRÉ for Being a Spy, Tappan, New York, 1780</i>	464
<i>The Trial of JOSHUA H. SMITH for Assisting the Enemy, Tappan, New York, 1780</i>	486
<i>The Trial of REVEREND GEORGE W. CARAWAN for the Murder of CLEMENT H. LASSITER, Washington, North Carolina, 1853</i>	514
<i>The Trial of STEPHEN MERRILL CLARK for Arson, Salem, Massachusetts, 1821</i>	597
<i>The Trial of STEPHEN RUSSELL for Arson, Boston, Massachusetts, 1835</i>	671
<i>The Trial of WILLIAM COBBETT for Libel, Philadelphia, Pennsylvania, 1797</i>	675
<i>The Trial of MATTHEW LYON for a Seditious Libel, Vergennes, Vermont, 1798</i>	687
<i>The Trial of ANTHONY HASWELL for a Seditious Libel, Windsor, Vermont, 1800</i>	695

<i>The Trial of JOHN BROWN for Treason and Insurrection, Charlestown, Virginia, 1859</i>	700
<i>The Trial of EDWIN COPPOC for Treason, Insurrection and Murder, Charlestown, Virginia, 1859</i>	806
<i>The Trial of JOHN ANTHONY COPELAND and SHIELDS GREEN for Insurrection and Murder, Charlestown, Virginia, 1859</i>	809
<i>The Trial of JOHN E. COOK for Treason, Insurrection and Mur- der, Charlestown, Virginia, 1859</i>	814
<i>The Trial of DAVID D. HOW for the Murder of OTHELLO CHURCH, Angelica, New York, 1824</i>	865

THE TRIAL OF GEORGE S. TWITCHELL FOR THE MURDER OF MARY E. HILL, PHILADELPHIA, 1868.

THE NARRATIVE.

On the corner of Tenth and Pine streets, in the City of Philadelphia, there lived in ease and with all the comforts of wealth, a family of three, George S. Twitchell, Jr., his wife, Camilla, and Mrs. Mary E. Hill. The home had been purchased by Mrs. Hill, who was a wealthy widow, and to whose daughter Twitchell had been married about four years.

On Sunday night, November 22, 1868, Sarah Campbell, a servant girl in the family of Mrs. Hill, returned about nine o'clock from church. She was obliged to ring the bell repeatedly, when finally Mr. Twitchell, but partially dressed, opened the door, and, after remarking that it was a cold night, and saying, "I wonder where mother is," returned to his bedroom. Sarah opened the door leading to the yard, and was horrified to see the dead body of Mrs. Hill on the brick pavement beneath the windows of the sitting-room. She called Mr. Twitchell, who, on seeing the body, exclaimed: "My God, what is this," and asked, "Will some one assist me in carrying her in?" He and Sarah took up the body and carried it into the kitchen, with Mrs. Twitchell's assistance, who had in the meantime come down stairs in her night clothes. The neighbors were given the alarm and a doctor sent for. They were met at the door by Mrs. Twitchell crying, "Mother has been killed," and when asked how, she replied, "She fell out of the second story window." And going into the kitchen they found the husband washing the face of the deceased with a wet cloth. An examination of the upstairs rooms discovered drops of blood on the floor and the window sill and Twitchell's shirt was also found bloodstained. These facts convinced the neighbors that the murder must have been com-

mitted in the house and as the only occupants at the time were Twitchell and his wife, they were at once arrested and taken to jail.

In December they were indicted for the murder of Mrs. Hill. The husband was tried first, and the evidence was very strong that both husband and wife had been endeavoring for some time to get hold of the mother's property, and that the former was very much embarrassed financially. The jury in a few minutes returned a verdict of guilty and the prisoner was sentenced to be hanged.

A few days before the day set for his execution, Twitchell made a statement to his attending clergyman that his wife (who had in the meantime been tried and acquitted) in a sudden quarrel with her mother had killed her without his knowledge, and that to save her he had helped to throw Mrs. Hill into the yard so as to make it appear that she was the victim of an accident.

Nobody believed this story and the gallows were ready for the murderer when the night before the day on which he was to be hanged he poisoned himself in his cell with prussic acid.

THE TRIAL.¹

In the Court of Oyer and Terminer of Philadelphia, December, 1868.

HON. FREDERICK C. BREWSTER,²

HON JAMES R. LUDLOW,³

} Judges.

December 29.

The courtroom was crowded, even the passage ways, until the police cleared them and drove several hundred spectators

¹ *Bibliography.* *"The Trial and Conviction of George S. Twitchell, Jr., for the Murder of Mrs. Mary E. Hill, his mother-in-law, with the Eloquent Speeches of Counsel on both sides, and Hon. Judge Brewster's Charge to the Jury, in full. To which are added many interesting facts in regard to the Hills and Twitchells never before published. Philadelphia: Published by Barclay & Co., 610 Arch Street."

There are numerous illustrations in the volume, most of which are the fancy of the artist. The outside cover has a portrait of Twitch-

outside. There were many females among them. Mr. and Mrs. Twitchell entered the courtroom arm in arm, the wife appearing to lean heavily upon the husband's arm. She was dressed in deep mourning, and her face was concealed by the thick black veil she wore. Mr. Twitchell walked erect, and bore the steady gaze of the people without being in the slightest degree affected. Mr. Twitchell, Sr., accompanied the prisoners, and was seated in front of the dock they occupied.

Furman Sheppard,⁴ District Attorney; *Richard Ludlow*⁵ and *Henry S. Hagert*,⁶ for the Commonwealth.

Patrick T. Ransford,⁷ *Charles H. T. Collis*,⁸ *Joseph D.*

ell, and inside are portraits of himself and his wife Camilla. The others are drawings of Twitchell striking Mrs. Hill over the head with a poker while she is reading on a sofa; his throwing her out of the upstairs window; he and his wife surprised in their bedroom by the ringing of the door bell; his arrest while bathing Mrs. Hill's head, and he and his wife, in the carriage with the officer on the way to prison, imploring him to declare her innocent of the crime.

² BREWSTER, FREDERICK CARROLL. (1825-1898.) Born Philadelphia. Attended Friends School and graduated University of Pennsylvania 1841. Studied law with his father and admitted to Bar 1844. President Law Academy 1845. City Solicitor 1862-1866. Judge Common Pleas 1866-1869. Attorney General of Pennsylvania 1869-1873. Was a finished classical scholar and linguist in French, Spanish, Italian and German. Author of numerous legal and literary works. Among others, *Digest Pennsylvania Reports*; *Brewster's Reports*; *Moliere in Outline*; *Disraeli in Outline*. Died in Charlotte, North Carolina.

³ See 3 Am. St. Tr. 308.

⁴ See 3 Am. St. Tr. 308.

⁵ LUDLOW, RICHARD. Educated at the University of Pennsylvania. Admitted to the Philadelphia Bar 1856. His practice was confined chiefly to civil cases and he was noted for his considerate treatment of witnesses. He died in 1874. See Phila. Public Ledger, June 8, 1874. *Martin's Bench and Bar*.

⁶ See 3 Am. St. Tr. 308.

⁷ RANSFORD, PATRICK THOMAS. (1844-1882.) Born in Ireland. Came to Philadelphia at an early age and after graduating from Central Hall School was appointed to a position in the War Department, and was afterwards private secretary to Judge Kelley, of Philadelphia. Studied law with John O'Byrne and was admitted to the Bar in 1867. See Phila. Record, Feb. 13, 1882. *Martin's Bench and Bar*.

⁸ COLLIS, CHARLES HENRY TUCKY. (1837-1902.) Native of Ireland and a member of a prominent English church family of which two were eminent Irish Barristers and one a noted surgeon of Great

Pratt,⁹ John O'Byrne¹⁰ and William B. Mann,¹¹ for the Prisoner.

District Attorney Sheppard. May it please the Court: The Court having fixed today for the trial of George S. Twitchell, Jr., and Camilla Twitchell,¹² charged with the murder of Mary E. Hill, and the defendants and their counsel being in court, I move that a jury now be called.

Britain. His father was a graduate of Trinity College, Dublin. All of the family but the father and this son, then fifteen years of age, perished on the steamship "City of Glasgow," while on the voyage to America. He studied law with John M. Read, of Philadelphia, and was admitted to the Bar in 1859. In the Civil War he gained well-merited recognition and after the Battle of Petersburg, was made a Major General at the request of General Grant. At the end of the war he resumed his law practice. Assistant City Solicitor Phila. 1866. United States District Attorney 1868. City Solicitor 1871; 1895. Director Board of City Trusts 1869. He held this position for fifteen years and compiled a complete history of the Charitable Trusts held by the City of Philadelphia. He was an extensive contributor to magazines. See Heitman Hist. Reg. and Dict. of U. S. Army. Martin's Bench and Bar. Biographical Album of Prominent Pennsylvanians. Biographical Encyc. of Pennsylvania.

⁹ PRATT, JOSEPH TOWNER. (1838-1877.) Born Middletown, Pa. Admitted to the Bar, but went into the Union Army. Major 23 U. S. Colored Regiment. Provost Marshal at Hilton Head, Charleston, S. C., and of the Northern District Department of the South. Knight Templar. Judge Court of Common Pleas Philadelphia 1874-1877. See Martin's Bench and Bar; Whittelsey (C. B.) Ancestry and Descendants of John Pratt.

¹⁰ O'BYRNE, JOHN. Admitted to Philadelphia Bar 1862. Practiced law in that city until 1882, when he removed to New York City and became District Attorney of the County of New York. See Martin's Bench and Bar.

¹¹ MANN, WILLIAM BENSON. (1816-1895.) Born Burlington, N. J., but his parents removed to Philadelphia in 1821. He was educated in the classical academy conducted by his father; studied law and was admitted to the Bar in 1838. Assistant District Attorney 1851-1857. District Attorney 1857-1871. Organized in 1861 the Second Regiment of Pennsylvania Reserves. Prothonotary of Common Pleas Courts (Phila.) for many years. He was a powerful public speaker and a very prominent criminal lawyer. See National Cyc. Am. Biog.; Martin's Bench and Bar; Hudson (S.) Penn. and Its Public Men.

¹² "Twitchell is nearly twenty-eight years of age, and has enjoyed up to this time a good reputation among his friends. He was educated at a college in Connecticut, which he left upon his father taking possession of a farm in New Jersey, near Carpenter's Land-

Mr. Mann replied that under the act of Assembly, *Camilla Twitchell* desired to sever and claimed a separate trial.

ing. At this time *Mrs. Twitchell*, who was several years older than young *Twitchell*, was engaged in the capacity of taking care of the house, a post which she had held since the death of *Mr. Twitchell's* wife. Young *Twitchell* wrought hard on the farm, and while here it was that he became enamored of the governess. She reciprocated his affection and they, with but little money in their pockets, eloped to New York, where they were married. After living there for a time, they came to Philadelphia, and here he came across his father, to whom the farm speculation had proven a bad investment. The old gentleman was very angry at the course which his son had pursued. The young man then engaged in the produce commission business in the Spruce street market, but this he soon relinquished. While boarding on South Front street, *Mrs. Hill*, who had married a wealthy contractor who had just died, purchased the property at Tenth and Pine streets, and requested the couple to come and live with her. When her husband died *Mrs. Hill* became possessed of a large income from his estate and an abundance of funds, together with the importunities of her daughter and *Twitchell*, induced her to change from a very unpretentious style of living to a scene of rather costly ostentation. Then *Twitchell* concluded to go into business again and engaged in the manufacture of shingles at Camden, N. J. But the enterprise did not succeed and at the time of the tragedy it was bankrupt and *Twitchell* was hard pressed for money. . . . *Twitchell* is about medium height and of fine muscular development. With persons who knew him well he has always had the character of a peaceable, inoffensive man. His chief amusement was in living among horses, and since residing with *Mrs. Hill* he had ample gratification in that respect. Fine horses and vehicles were obtained by *Twitchell* soon after the house at Tenth and Pine streets was purchased, and in pleasant daily drives, *Mrs. Hill*, her daughter *Camilla*, and *Twitchell*, appeared to be getting along with one another in the most agreeable manner. *Camilla Twitchell*, the daughter of *Mrs. Hill*, is a person of rather small stature. *Twitchell* is her second husband, as she was married some years ago to a man named *Martin*, who was an attendant in a store in the vicinity of Tenth and Chestnut streets. Whether a legal divorce, or a simple determination to get away, separated *Mr.* from *Mrs. Martin*, is not definitely known, fondness for somebody else instead of the husband is ascribed by some people as the cause of the matrimonial disruption. From what we have learned there can be no doubt that *Mrs. Hill*, her daughter, and *Twitchell*, lived together for several years upon the most friendly terms. The girls who lived with them testify to this fact, and outside association in almost daily drives about the city, and other mutual amusements, show that they must have been pleased with each other's company." Report of the Trial, *ante*, p. 2.

The COURT allowed the motion to sever.¹³

The jurors were called to the stand and sworn true answers to make to such questions as might be put to them touching their competency to serve as jurors in this case. To such of the jurors as had formed or expressed an opinion, the Court put the question, "Notwithstanding the opinion you have formed, can you enter the jury box and decide the guilt or innocence of the prisoner upon the evidence submitted to you, and that alone, uninfluenced by the opinions you say you have formed."

The jury were sworn as follows: George Toppin, saddler; Charles E. Stewart, merchant; John Landis, stove-finisher; Michael Dych, shoemaker; Jeremiah Wykoff, Robert Topping, hat-presser; Daniel Riggs, watchmaker; William Sheppard, gentleman; James A. Holbrook, stone-cutter; N. Gibberson, manufacturer; Thomas Riley, grocer; Frank Clark, carpenter.

MR. LUDLOW, OPENING FOR THE PROSECUTION.

Mr. Ludlow in opening referred to the high and solemn duties of the jury, and said that the crime of murder had become so common that the citizens demand the vigorous execution of the law. A murder most foul, unprincipled and devilish was committed on the 22d of November, with foul premeditation, and Mary E. Hill lost her life in her own house. The deed of Mrs. Hill's property was made in the name of Mrs. Twitchell, and when the former heard of this she demanded a reconveyance. This murder was committed on Sunday, and on Monday or Tuesday the suit for the reconveyance was to be commenced. All the facts of the case were bloody and they would all point with unerring aim to this prisoner at the bar.

The officers of the Commonwealth stand, without malice, over the grave of a murdered woman, seeking to protect the jury as well as the daughters and wives of the land, and to hold above every citizen the shield of the law, particularly to

¹³ Sometime after Twitchell's conviction and while he was in prison awaiting execution, Mrs. Twitchell was tried and acquitted by the jury.

aged women in their own houses, when the shades of night come over. He invoked the jury to sustain the law, and thereby strike terror to the hearts of those who brutally murdered aged and defenseless women.

THE WITNESSES FOR THE COMMONWEALTH.

Dr. E. B. Shapleigh. Am Corren's physician; made a post mortem upon the body of Mrs. Hill on the morning of Monday, 23d, at the northeast corner of Tenth and Pine; there were marks of violence upon the head, principally upon the right side; a lacerated wound two and a half inches long in the right temple, just within the edge, front part; over upper part of forehead there was another lacerated wound; over the outer edge of right eyebrow there was a contused straight wound three quarters of an inch long; on the upper part of forehead there was a straight contused wound one inch long; there were five small wounds upon the forehead, about half an inch to three-quarters; above the right ear there was another straight contused wound; above this, over upper part of parietal bone, there was another contused straight wound; over the posterior and upper part of the parietal bone there was a triangular wound, the wings of which were three-quarters of an inch long; on the right side, near the upper part of left parietal bone, there was a straight contused wound two inches long; I think that describes the wounds; they were thirteen in number altogether; have a plaster cast here of an ordinary skull; will mark on this skull the position and length of all the wounds. (The *Doctor* marked on the cast, with red and

blue, the location of the wounds.) That disposes of external appearance; the right half of frontal bone, the anterior portion of parietal bone, the malar bone, including the cavity of the orbit of the eye, were comminuted, broken into small, irregular pieces; there was a hole into the brain at the right temple, downwards, inwards and backwards; it was quite as deep as my finger is long; there was a fracture extending entirely across the head through the right and left parietal and through the temporal bone, extending to the base of the brain, dividing the whole skull; another on the left side, irregular; a lacerated wound is a torn, irregular one; that was the character of one in the temple and in the forehead; the contused wound was straight, caused by a non-cutting instrument, the tissues being broken apart instead of divided by a cutting instrument; I found a slight bruise on either knee, and on the back of both hands; the second finger of the left hand was nearly severed at the first joint by a blunt instrument.

To *Mr. Sheppard.* The skull was rather thicker than normal; the body was five feet one or two inches long, and weighed from one hundred to one hundred and ten pounds; she seemed to be an old woman, upwards of sixty years of age; she came to her death from injuries to the head

by violence; (poker shown), this, or an instrument like it, might have caused the straight wounds; the tongue of the poker might have caused the wound in the temple; the length of the tongue corresponds with the length of my finger except it is a little longer; the tongue of the poker might have been twisted around and thus enlarged the wound; see a spear of gray hair on this poker; the color of Mrs. Hill's hair was gray; this looks like blood on the poker.

Cross-examined. Have been engaged as physician to the Coroner six or seven years; almost daily engaged in post-mortems; am satisfied it is almost impossible to tell what kinds of instruments inflict some wounds; it is possible for an instrument like a poker to have inflicted the wounds; the penetrating and straight wounds might have been inflicted with a poker, and in a certain measure obscured by the fall; the shaft of the poker could have produced the straight wounds, and the tongue of the poker the penetrating wounds, or an instrument like it; have seen just such wounds from a cane, (cane with heavy leaden head, shown); the head of this cane would make a different wound from the stock of it, because it is shaped differently; if the wood of the cane had been scooped out and filled in with lead it would make some of the wounds; such an instrument would mash the skull in, but you could not account for the hole made in this head; perhaps sufficient velocity could be obtained out of a poker to make this wound; a canister shot tied in a sling would mash in the skull, but not make the hole in the brain; I could readily

put two fingers in this hole; could force four fingers in, because I could stretch the scalp; it is possible to push your finger into a wound as far as you choose after the skull is crushed in.

Sarah Campbell. Recollect the examination of the body of Mrs. Hill by Dr. Shapleigh; lived in her service ten or eleven weeks; Mrs. Hill, Mrs. and Mr. Twitchell and me constituted the family; recollect the Sunday of this occurrence; left the house before three o'clock, leaving no person that I know of in the house, only Mrs. Hill; Mr. and Mrs. Twitchell had gone out, some time after dinner and before I went out; we had dinner from 12 to 1 o'clock on Sundays; returned to the house between 9 and 10 o'clock; rung the bell; it was not answered at first; waited for an answer; I rung it several times and waited again for an answer; an answer was made some time after by Mr. Twitchell; he unlocked the front door and said, "is this you, Sarah?" I said, "yes, sir;" he said "do you think where mother can be?" I said "I didn't know, but we would see;" there was no gas burning in the entry; there is a burner there and is generally used, but put out early; he had no light when he came to the door; he had a short dark coat and pants on; did not observe whether he had boots on; don't know if he fastened the front door when I went in; he stopped behind me at the door; I went into the kitchen; he left it before I got into the kitchen; he went upstairs; found the door leading from the entry to the kitchen open; the back door of the kitchen was open also; it was a cool evening; felt the cold air as I

went to the kitchen; there was a lighted candle on the kitchen table; Mr. Twitchell did not go back with me into the kitchen; noticed no door open or shut when he went up stairs; went to close the outside kitchen door, which opens into a small enclosed yard, with Venetian slats on the Pine street side; the back second-story room extends over the enclosure; saw something in the yard; turned back, took the candle, and saw a woman lying there in the side-yard, outside of the slats; did not go further than the door with the candle; was able with the candle-light to see what it was; supposed it to be Mrs. Hill from her being looked for; turned back into the kitchen and called Mr. Twitchell; Mr. Twitchell said "what," I think, or something like that, when I called him, and I called again for him to come down fast; the first answer was made some time after I called; the answer appeared to come from up stairs; did not observe a door open or shut before the answer; "Mr. Twitchell, come down fast," were my words; heard no answer to that; he came down the front stairs, I think; I went into the yard, and I told him to come out; I said, "Mrs. Hill was lying in the yard," as I was passing into the yard; he asked me no questions when he came down; did not take the candle to the yard; went outside the Venetian blinds; don't recollect any answer when I said Mrs. Hill was in the yard; in the yard, he said, "My God! what's this?" the candle was in on the table; we carried in Mrs. Hill; he asked, would no person assist to carry her in; Mrs. Twitchell was down there then; assisted him; he caught her by

the shoulders to raise her up like; took hold of the body by the feet; the body was placed on the sofa in the kitchen; Mr. Twitchell asked for water and asked for a doctor; water was procured, and he bathed the face of Mrs. Hill with a cloth; don't know what else he said after the water and doctor; he applied the water to the face repeatedly, saying something I don't know; he was lamenting and grieving very hard; he said, would no person go for a doctor; don't remember what else; can't remember his words when lamenting; did not see him do anything but bathe the head; did not observe him make any examination of the injuries or limbs; went for a doctor next, straight across Tenth street, out of the front door; did not get one; went back to the house, and went out of the gate on Pine street to Mr. Morrell's shoe store, on Pine street, below Tenth; I let myself out the gate; it was shut; it is fastened by a bolt, and was fastened by the bolt when I went to go to Morrell's; I had to unbolt it to get out; at Morrell's told a man who came to the door that Mrs. Hill didn't feel well, and Mrs. Twitchell wanted somebody to come over. Mrs. Twitchell asked me to go upstairs until she got some clothing on, and I did so; don't know how long it was while she was getting dressed; came out shortly after she got dressed; think she came to the kitchen; the kitchen was heated by a range; the poker was usually kept hanging up by the side of the range; there was a poker in the second-story room with a brass top or head on it; the kitchen one was the longest; (poker shown;) this looks like our kitchen poker, but I can't say

whether it is or not; it had a head like this; don't know the length and weight, but it is something such as this; did not see any poker in the kitchen next day; did not look for any; it may or it may not have been there, but did not observe it; there were four dogs belonging to the house; if they heard any noise about they were noisy; if they heard people come in they barked; they were kept up stairs, I think, in Mrs. Hill's and Mr. Twitchell's rooms; don't remember seeing the dogs when I went in; saw them in Mrs. Twitchell's room. Mr. and Mrs. Twitchell occupied the back apartment of the front building, second story; Mrs. Hill occupied the front second-story room; my sleeping room was in the third-story back building.

No cross-examination.

John P. Montgomery. Reside next door to Mrs. Hill; about half-past nine, while sitting in my front second-story room, my attention was attracted by a very loud and unusual knock at the hall door; looked out the window and saw a person I could not recognize by sight, but whose voice I recognized as that of Mrs. Twitchell, who said, "There has been a murder in the house," and requesting me to come in; did so, meeting Mrs. Twitchell in the hallway, and following her into the kitchen, where I saw the body of Mrs. Hill on a settee, and Mr. Twitchell standing near the body, and there was a white cloth thrown over the face; Mr. Twitchell was the only person there then, and was requested to go for a doctor, and did so; upon my return, found in the kitchen the body in the same position, and several persons in the room, including Mr. Twitchell, standing

quite near the body, the servant girl, Dr. Zantzinger, Mr. Leidy, Mr. Doster, and Mr. Morrell; returned to my house for a few minutes, and upon again returning, found the same parties there. Shortly afterwards Mr. Twitchell was arrested, and I accompanied the officer in charge of him to the station house; came back to the house and went home. On the way to the station Mr. Twitchell said, "Mr. Montgomery, you don't believe I am guilty of this?" I replied, "I don't wish to consider any one guilty." At the house, when I saw Mr. Twitchell, he had on a dark coat, buttoned up high; could not say positively whether he had on a white shirt or not.

Cross-examined. Was satisfied that it was Mrs. Twitchell at the door knocking; when she admitted me, and I met her in the hall, her manner appeared agitated and distressed; the tones of her voice and her language indicated agitation and distress very decidedly; she seemed half dressed; she had on a short nightgown; her clothes were either wrapped around her or hastily put on.

Mr. Mann suggested to the Court that the jury be allowed to visit the house, Tenth and Pine and examine it.

The COURT stated that it had heretofore refused this, because of the danger that the jury would be communicated with, notwithstanding every precaution.

Daniel Doster. Being told that there was trouble in the Hill house, went to the place with Mr. Leidy. I entered, while Leidy went for a physician; saw the body of Mrs. Hill, and Mr. Twitchell standing at her head, bathing it. I said to Mr.

Twitchell, "This is an awful thing—how did it happen?" The prisoner replied, "We found her in the yard," and asked, when the bell rang, "For God's sake, open that gate, and let the doctor or somebody in!" On going to the door to answer the bell, saw a woman, who lighted the gas in the hall, and who then ran upstairs, exclaiming, "Oh, my God, my poor mother; will no one help me?" Twitchell had on a light undershirt; don't think he wore a linen shirt with plaits. When Officer Howard brought in the poker from the yard some one exclaimed: "This is the thing that did the deed." Am sure the prisoner heard the remark and that he made no reply.

Chauncey Leidy. When I came back from the doctor's, I, too, saw Mr. Twitchell at the head of Mrs. Hill; examined the body; saw the wound in the temple; placed my finger in it and said to the prisoner, "It is not worth while bathing this woman, for she is dead," and that she had been dead for some time. Mr. Doster and I examined the yard, and the dining-room and sitting-room; found pieces of a comb in the blood in the yard, and also a bent pair of spectacles in the dining-room in front of the sofa. Twitchell wore an undershirt light in color, but no linen shirt.

Officer Howard. After having examined the case for about five minutes I told the prisoner to put his cap on, as I was going to take him to the station-house; he said he wanted to change his clothing; said I would go with him; in the kitchen he had on a dark gray undershirt and a brown coat; he had not a white linen or muslin shirt; he had no

white collar on; he had boots on; went up with him to his bedroom, second floor back room, in the main building; he put on a white shirt, a black cloth vest, and the same coat he had on down stairs; on entering the bedroom, there were two dogs there—small dogs—one a terrier; they were barking nearly all the time I was in the room; they were very noisy; when we came down stairs he went to an entry closet and put on a dark overcoat; then we went to the station-house; searched him and locked him up; going to the station-house he said he was innocent, and did not blame me for doing my duty; when he was up in the room he did not put on any boots; asked him how the blood got on his white shirt; he said he got it from carrying the old lady in from the yard; I told him I told him I thought it could not be possible; there was also blood on his vest and pants; when I went back to the station-house took Mr. Twitchell out of the cell and found the blood on his white shirt bosom, and on the lapel of the vest, on the coat and pants, and spots on the boots; took the clothing off him; took off boots, pants, shirt, vest, coat, and put other clothing on him; Detective Warnock ordered the change. Detective Warnock took charge of the clothing.

Cross-examined. Didn't hear the dogs bark until Mr. Twitchell opened the door; the bustle and walking about didn't cause the dogs to bark; didn't hear them till I got in the room; the dogs came towards me, and I drove them to one side; kept my eye on them to see that they didn't snap at me; can't say when I first saw the blood on his shirt;

whether it was in the bed-room or at the station-house; don't recollect saying that the station-house was the first place I saw it; asked him twice where he got the blood; twice he answered he got it carrying the body in from the yard; I told him it could not be, but don't recollect saying that it was because he didn't have it on at the time; the reason I gave him was that because it could not be made in that way; said he could not get spots on in that way.

W. H. G. Morrell. I reside at 928 Pine street; was informed of the murder about 9:30 p. m., and went at once over to the house, where we met Mrs. Twitchell in the entry-way, saying, "Mother has been killed!" Asked her how she said, "Fell out of the second-story window;" I said, "How could she fall out of the window?" then followed her to the kitchen; Mr. Twitchell was standing at the head of the body washing it with a wet cloth; I said to him, "How could this be? How could she fall out of the window and injure herself so?" He said, "I don't know;" while Dr. Zatzinger was making the examination Mr. Twitchell was exclaiming, "She is not dead." I then examined the body, and found it cold, as if dead about an hour; my suspicions were aroused by the wounds that I saw, which I thought could not be done by falling out of a window. In the yard near the screen I found the poker; it was lying in the blood where the body had laid. I gave it to Officer Howard. We then went up stairs and found on the center-table a candle and a coal-oil lamp, both lit; as soon as I discovered blood I said: "This is the place where

the woman has been murdered;" I followed the blood to the back-room window, and found blood on the lower end of the sash, and also on the sill; the gas was burning here as well as in the kitchen; the curtains of the windows were down; heretofore they were always up; an officer and myself noted blood down the back stairs, as if some one had come up or went down; afterwards I went down stairs and asked Mr. and Mrs. Twitchell if there was any one in the house besides them; they said "No," and I then said, "One of you two have committed the murder;" to which charge neither one made any reply; I insisted on the officer taking them in charge, which he did, taking them up stairs to get on some clothing; first saw Mr. Twitchell dressed in pants, undershirt which was dark gray, and a coat buttoned across; he had no collar on; he had on a light coat rather longer than this (coat exhibited), stayed in the room with the body and the officer went up stairs with him; after they had gone to the station-house I remained to take charge of Mrs. Twitchell and the girl; Twitchell had no white shirt on when I saw him; it was a dark gray; after Mr. Twitchell went to the station-house had a conversation with Mrs. Twitchell; I related the circumstances discovered, saying that it was not possible for any outside person to get into the house, the gate being fast, and they being the only ones in the house; I said "I did not think it possible for a strange foot to come inside without the dogs detecting it;" she said that her mother was in the habit of carrying from \$2,000 to \$3,000 in her bosom, and that she had been

in the habit of telling people that she carried it there, and that they had come to kill her for the sake of the money; I said to her, "No person would come into the house to murder her for the sake of the money, and expose themselves by carrying and throwing her out of the back window;" I said again, that either she or him, or both, had committed that murder; she said, "What reason would I have for killing my mother?" I said, "For the very reason that you named before, the want of the money she had on her"; she attempted no explanation of any kind whatever; she seemed as little concerned as a stranger, manifesting no feeling.

Dr. Richard J. Levis. I have here a coat, vest, pantaloons, shirt, collar, cuffs, boots, sleeve buttons, piece of a blanket, a door knob, a piece of floor oil cloth, two pieces of carpet, an upper set of artificial teeth, a candlestick, coal scuttle, a small clot of blood from a non-resisting substance, also a poker, all these were received from an officer for examination. Have had experience in the examination of matters of this description; in all the articles there is positive evidence of the presence of blood, except on the piece of carpet, where it cannot be traced, and on one of the metallic sleeve buttons, where it is probable blood has been, but it cannot be determined; where spots or stains cover a large extent of surface, the presence of blood is apparent to ordinary visual observation, and a low magnifying power will show it in the meshes; the blood here presents three forms: sprinkled spots, larger soaked spots, and smeared

places; the sprinkled spots indicate that the blood was in a fluid state, and scattered with uniformity; the soaked spots show that fluid blood had fallen and dried where it fell; smeared blood indicated that some substance had passed over the spot, or there was friction, or it came in contact with clots; all the process of ascertaining the presence of blood was gone through with to an elaborate degree; the blood presents the characteristics of the blood corpuscle of the mammal; the coat had sprinkled spots, larger soaked places and smeared places; there is a marked smeared place on the left side near the collar, and on the front; the soaked spot is on the right cuff of the coat—very marked; the sprinkled spots are very abundant on the front and the sleeve; counted forty-five spots on the front of the right sleeve; the vest had one marked smeared place and some evidence of sprinkles; in the examination of the coat it is evident the coat was not buttoned, as there are decided markings of blood on places that would be covered if buttoned; the pantaloons present sprinkled spots and also soiling as of blood in a diluted condition; the boots were sprinkled on their tops, and some slight staining along the edges of the soles; the two pieces of blanket are both marked with blood stains, it has no distinct form, it is decidedly blood, and has more the appearance of being smeared on; the oil cloth is well marked with blood; the door knobs were marked with blood—both knobs; examined the poker last evening, found blood on it, and one grav human hair, and some fragments of wool and cotton; the blood ex-

tends at least a third of the way up; the sprinkled spots might be made by jets or spattered from a body living or very recently dead, they would also be thrown from a bloody weapon; saw the spots on the wall of the building; those on the wall were sprinkled spots.

Cross-examined. Man, and most of the domestic quadrupeds belong to the mammals; where a man was carrying a body where the hair was filled with blood, I think it would gravitate down and not sprinkle.

Lieut. Connelly. Was at Mrs. Hill's house the morning after the murder, between eight and nine o'clock; had a conversation with Mr. Twitchell at the station-house; asked him if he wanted to see counsel about his case and he said he didn't think it was necessary, as there seemed to be a fatality about it; asked him how he accounted for the blood on his clothing, and he said he got it carrying the corpse in from the yard; asked him how he got the blood on his shirt, and to that he made no reply.

Cross-examined. My conversation was not the same as that referred to by Officer Howard, as Howard was not present at mine; Twitchell used the word "corpse;" he did not say "Mrs. Hill."

Officer Warnock. On the knob of the door inside I found, what appeared to be one drop of blood, the center of it appeared to have been cleaned out, but the outlines were perfect; there were some slight drops of blood on the oil cloth towards the door; they were specks, not drops; they were inside the room, between the sofa and the door; they extended to within a very short distance of

the door; there were specks on the marble-top table standing in front of the sofa, about the center of the room; found specks on the chandelier; there were specks on the glass globes; examined the fire, it had apparently been made up freshly, and upon the top of it was a lot of ashes of burnt paper; I took some of the ashes out and saw that it had been printed matter of some kind, the only piece I could preserve I put in the dish of the candlestick—I left it there. Next went to the prisoner's room; examined the room; looked at the wash-basin to see if there were any traces of washing blood; found none; on the bureau there was a collar and a pair of cuffs with sleeve buttons in them, the sleeve buttons were marked "G. S. T.;" these were the cuffs and collars I took to Dr. Levis; took them from the house out of Mr. Hager's hands on the 26th of November; they were still in the same room where I saw them that night; did not observe any poker there in the kitchen that night; found a long probe or rod, but not what is called a poker; this iron rod was hanging by the range; there was a poker in the dining-room; (poker with brass knob produced—not the one with blood on it;) noticed the body of Mrs. Hill that night; she had on a cap or hood, or something of that kind; it was on the head when I saw the body; her hair was not loose; it appeared to be confined by the cap or hood. This bloody handkerchief I found on the floor in the kitchen, it appears like the one that was on Mrs. Hill's head that night; this towel (bloody) was got the next day, stuck on the Venetian blinds, above the hydrant; this is the

pan that was in the kitchen with bloody water in it, used in washing the head; the box is a collar-box, which I first took to the prisoner, and which I afterwards got back from him; in making my examination of the doors, windows and shutters, found no marks of violence or blood. The rear gate and shutters I found all locked and secured. I was present at the examination of Mrs. Hill's room the next day, I examined it partly that night; examined the washstand that night to see if there was any bloody water; there was no disorder there; there was a wardrobe and bureau in Mrs. Hill's room; we examined the wardrobe; one side was open, the other side was locked; there were two doors to it; inside the wardrobe there are two compartments, each door closing a distinct compartment; there were dresses and other things on the shelves, and near the top were two paper boxes; in the paper box there was \$320—three \$50 notes, some \$10's and \$5's; there was brought out at the same time a diamond cluster ring, and a pair of diamond ear-rings, also a due bill or note of Geo. S. Twitchell for \$50; had a conversation with the prisoner after his arrest; went to the station-house with Officer Howard; I told him to take off his outside clothing; he took it off; examined the coat he had then on; examined his vest, and asked him how he got all that blood on it; he said by carrying Mrs. Hill in out of the yard; next examined the shirt, and asked how came this here—the blood; he said he didn't know; told him to take off his boots, and he then asked me if I was going to strip him; told him not quite, that I would send

him other clothing; told him to put on his overcoat.

Cross-examined. In looking at the means of escape, did see two ash barrels in the yard, to some men it would not be easy to get on those barrels and spring over the fence; the top of the fence is more than three or four feet from the top of the barrels; the fence is about eight or nine feet to the top of the rail; did not try to see if one could stand on the barrels and reach the top.

Joseph Gilbert. Am a real estate broker; was so in 1866, at that time knew Mary E. Hill, also knew George S. Twitchell; acted as the broker for General Pleasanton in the sale of the property at Tenth and Pine streets; I sold the property for him to Mrs. Hill, about 1866, for \$16,800; had several interviews with Mrs. Hill about the sale; Mr. Twitchell was present; my bargain was with Mrs. Hill; after we agreed upon terms I drew up an agreement in favor of Mrs. Hill, and handed it to Mr. Twitchell, and he said he wanted the agreement in his name, which was done; Mrs. Hill was not then present.

Mr. Mann. Was the agreement in writing? Yes, sir.

Mr. Mann. We object, then.

Mr. Gilbert. That agreement went into the hands of Gen. Pleasanton.

Mr. Mann. We ask the Court to strike this from the evidence.

JUDGE BREWSTER. He has not given the contents.

Mr. Mann. The agreement will give the person in whose name it was made. We should not be at the mercy of a witness, when the paper is in existence. We ask that the jury be instructed to

disregard the evidence. Let the agreement be produced.

JUDGE BREWSTER. The words "which was done" are stricken out.

Mr. Gilbert. Mr. Twitchell objected to the agreement being in Mrs. Hill's name, and asked it to be in his name, after Mrs. Hill and Mrs. Twitchell had left; next saw Mr. Twitchell on the evening of the same day, when he called and gave me \$1,000, on account of the purchase money; he said then that he wanted the deed made in his wife's name; I asked him who his scrivener was; he said he had no particular one, and I said I could recommend one, and out of a number that I named, he selected Mr. Ed. R. Jones; the following day I met him at Mr. Jones' office.

Mr. O'Byrne said they would object to this testimony unless the Commonwealth would state the purpose.

Mr. Hagert. We propose to prove by this and other witnesses that Mrs. Hill purchased the house N. E. corner of Tenth and Pine streets with her own money; that the prisoner, without her knowledge and consent procured the conveyance to be made in the name of his wife; that this fact came to the knowledge of Mrs. Hill some time in the summer of 1868, and was communicated to her by a third party.

Mr. Mann. To which we have no objection.

Mr. Gilbert. The matter was left in the hands of the scrivener; was present at the execution of the deed and the payment of the money; Gen. Pleasanton, Thos. Williamson, Mr. Jones, Mr. Twitchell and myself were present; Mrs. Hill was not present; saw her afterwards in July last.

Mr. Hagert. Had you, or had you not, up to that time communicated to Mrs. Hill the fact that the deed was not in her name? I did not converse with Mrs. Hill after the deed until July, 1868, and had no correspondence with her; Mrs. Twitchell, in the presence of her husband, deposited with me a will. That is the paper; returned it in July, 1868; I received it about the date of it, October 10th, 1866; surrendered the will at Mr. Twitchell's own request; a short time after I sold the house he came to me and said the old lady had put a large silver plate upon the door, and asked what he should do; told him he had better leave it be; at another conversation he stated that he had had a terrible time with the old lady; asked what was the matter, and he said "She accused me of robbing her;" told him he should not stay there; there were several conversations, and I always cautioned him about making such remarks, as I did not consider them to be prudent; he came on one occasion and said, that a very good thing could be made by buying the interest of the heirs of Mrs. Hill, as they could be bought for one half, or one-third at the extreme, and the old lady would not live long; he seemed to argue that she would not live long; at other times he argued that she would live long; when he was telling about his troubles, I said he had better submit, and he argued that she would live long; I said that whenever I saw her she seemed kind and pleasant, and he said: "O yes, whenever anybody is present;" he always manifested a feeling at these interviews, and I always made it a point to suppress it; he called

her "an old b——h;" he has said that he would "kill the old b——h," that was more than once; invariably I cautioned him against making such threats, and told him that he ought to leave the house if he had so much trouble; I met him daily until within six or eight months ago; met him when he kept horses in Tenth street, near Walnut; these conversations would occur on the way from the stable; several times I was compelled to pull myself away from him; stated to Mr. Twitchell that his mother-in-law and Mrs. Henderson had called to see me, and that she said her daughter and he had robbed her at several times; that she placed money in the wardrobe and bureau and cupboard—\$1,000 and \$1,500, and parts of the money had been taken at several times; I told him I did not feel safe holding that will any longer; he said he would take the will; I declined to leave him have the will, as it was entrusted to me by his wife, and I asked for an order from his wife; he got an order and he got the will; don't think he said anything in regard to what Mrs. Hill had said.

Cross-examined. These talks about the mother-in-law were about a year ago; we used sometimes to go out riding together; I showed Mrs. Twitchell's will to Mrs. Hill; it was a will leaving her property to her husband, and not to her mother; I did not think this a betrayal of trust, as I considered it unsafe to hold the will after the fearful story Mrs. Hill had given me of this man's conduct.

Joseph Henderson. Knew Mrs. Hill for twenty-six years; she was Samuel Hill's widow; he

died in February, 1866. Mr. and Mrs. Twitchell had been married about a year at the time of Mr. Hill's death; was her agent after the death of Mr. Hill, and visited her at Tenth and Pine sts. several times. Mrs. Hill and Mr. Twitchell appeared to be friendly until July last; called at Mrs. Hill's residence the latter part of July. Mr. Twitchell was present at one of the interviews. He came in after the interview, in a very excited state, his wife going for him, and asked why I came there, making a disturbance in the family, and said, "I give you ten minutes to get out of this house." I told him I was in no hurry. He said I had better attend to my business, and gave me ten minutes more. He said if I didn't go, he would take me out with a police officer. Told him that would be a better way. The last payment I made to Mrs. Hill, was the Friday before the murder, two hundred and seventy-six dollars and sixty-five cents.

Cross-examined. I estimated her personal estate at about thirty-five thousand dollars; it was all in money. She had a life-estate in Mr. Hill's real estate. I collected the ground rents, and she collected the house rents, assisted by Mr. Twitchell. The rental for the present year, ground rents and house rents, was upwards of six thousand dollars. After her death the property went to Mr. Hill's relations. She did not deposit her money in bank to my knowledge; do not know where she kept it. The endorsement on the package of title papers is, "Title papers of premises Tenth and Pine streets, belonging to Mrs. Camilla E. Twitchell." Never saw her place her money in her bosom.

Edward B. Jones. I prepared the deed for the house, Tenth and Pine sts. to Camilla E. Twitchell by Mr. Twitchell's direction; Mrs. Hill was not present at the time. He first directed it to be made in his own name, but afterwards in his wife's. He made the endorsement on the bundle (referred to by Mr. Henderson.) After the execution of the deed, I placed it on record, and afterwards gave it to Mrs. Twitchell.

Cross-examined. He never mentioned Mrs. Hill's name in connection with the deed, first, last, or any time.

Mr. Mann asked that permission be given to have the clothes of the prisoner submitted to examination by a physician of the defendant's selection.

The COURT said that the clothes might be examined in an adjoining room.

The *Counsel* was then asked to name the person to whom the clothes were to be given, but declining to do so, the matter was dropped.

Samuel T. Davidson. Am an officer of the First National Bank of Camden. In November last, George S. Twitchell kept an account in the bank; there have been no transactions between him and the bank since November 10th; on the 20th, his balance was two dollars and ninety-four cents. At one time his account was overdrawn four hundred and eleven dollars and ninety cents.

A. B. Warden. Am a jeweller, Fifth and Chestnut streets; know the prisoner. On November 21st the prisoner applied to me for a loan of fifty dollars; did not loan it.

Edward F. Morgan. Am a member of the firm of Morgan & Orr. The prisoner is indebted

to us about five hundred dollars, a portion of it is a note we got discounted for his accommodation, and the other for incidental work to his engine. He started operations in Camden about the middle of May last.

Cross-examined. He purchased a steam engine and boiler for twelve hundred dollars; he paid in cash six hundred dollars, and gave a note for the balance; that note was paid; that was not the accommodation note; that note came due last Friday.

Detective Taggart. Made an examination of the safe of the prisoner at Camden at Mr. Twitchell's place of business; he kept a place for manufacturing shingles; the safe contained books and papers pertaining to his business, contained his accounts and memorandum of notes; found a book of notes payable; there was a bill of Vanleer to the defendant for one hundred and ninety-eight dollars—it was an unreceipted bill; also a note due to Derby & Weatherly for four hundred and thirty-six dollars and fifty cents, due November 23, 1868. In the bank book, the balance marked was two dollars and ninety-four cents. Also, found a note to Morgan & Orr for four hundred dollars.

(The various articles of clothing, etc., used in the progress of the case were next given in evidence.)

Mr. Mann said the Commonwealth was ready to allow any proper person to examine these articles, under such protection as may insure their safe return.

The COURT fixed Saturday morning at half past nine o'clock in the presence of the Judges and counsel for the examination.

Mr. Mann said that the defense

desired time to consider this modification of the order, before it was accepted, unless it was understood that the Judges were not to be present at the examination.

JUDGE BREWSTER said that the

Court considered it necessary and prudent to be present.

(A large model of the house at Tenth and Pine streets was brought into court. It was constructed in such a way that the interior can be seen.)

MR. PRATT, OPENING FOR THE DEFENSE.

Mr. Pratt began by giving the leading points of the testimony. It was admitted that Mrs. Hill was murdered; but not by the prisoner. The evidence against him was purely circumstantial, and was, therefore, to be carefully weighed by the jury, and no verdict should go against him unless it was conclusive. The defense would put in evidence the good character of the prisoner, to show that he was a kind-hearted and humane man. They would prove that the prisoner could have had no motive to commit a deed like this. They would prove that Mrs. Hill's husband left a will, by which a large estate was given to Mrs. Hill for life, and then to his, not her heirs. The prisoner and the mother had pleasant relations—there were no quarrels between them; shown from the declaration of the deceased, that she gave the house, at Tenth and Pine, to her daughter, the wife of the prisoner; that she said it was her intention that her daughter should be cared for; that all the furniture in the house was purchased in the name of Mrs. Twitchell; that, with Mrs. Hill's death, the large income would cease, and therefore they had nothing to gain by her death. That it was the habit to take the dogs up stairs early in the evening; that they did not bark when the Commonwealth's witnesses entered the house. We will show that the room in which the murder was committed had but one door, and it was closed, and the distance to the bed-room of the prisoner was too great to allow him to hear while he was asleep. We will show you that the wounds on Mrs. Hill's head could be inflicted by other instruments than a poker; that not a dollar of the missing money had been traced to the defendant; that Mrs. Hill frequently stated that the house at Tenth and Pine was for her daughter; that the furniture in the

house was purchased in the name of Mrs. Twitchell; that the prisoner's credit was good; that Joseph Gilbert was not to be believed; and that other persons were in the house.

THE EVIDENCE FOR THE DEFENSE.

Mr. McNee. The fence was five feet nine inches to the top of the board, and the ornamental railing adds twenty inches. There is a tree in the yard close to the fence, and also two ash barrels.

Franklin Devine, Chas Maloney, Richard Skinner, Joshua Abbott, Joseph Daniels and Andrew Glading testified to the good character of the prisoner.

R. J. Dobbins. Am a builder; considerable noise could be made in the dining-room without being heard in the second-story bedroom; I was in the back bedroom and could not be heard hallooing or pounding in the dining-room.

Cross-examined. Mr. W. Esler and Mr. Mather were the gentlemen who remained in the dining-room; this was one day this week, between 12 and 3 o'clock; I was there last Saturday with William Struthers and Frank Gatchell; Mr. Bender was with us when we made the experiment; we resumed our positions, and were there about half an hour; when we went in, Mr. Bender cried out as a person would who was being murdered; I was in the dining-room when Mr. Bender made this noise.

Mr. Long. I have known the defendant for fourteen years; his character was good; I have seen him at Tenth and Pine streets with Mrs. Hill; was at the prisoner's place of business on the Tuesday before Mrs. Hill was killed; the prisoner was there,

and he took me around among his stock.

Cross-examined. He did not tell me that there was a chattel mortgage on his place of \$1,500; did not tell me he was in debt for rent; saw but two dogs in the house at Tenth and Pine; he left Carpenter's Landing about four years ago; he went into business, I think, about a year ago.

Ellen Dolan. Lived with Mrs. Hill; went there to live last May; left her last July, and then came back; was two months away from her, but with that exception I lived with her all that time; Mrs. Hill hired me; I was to do the down stairs work; Mrs. Hill and Mrs. Twitchell did the chamber work; they used to sit in the dining-room over the kitchen after supper; Mr. and Mrs. Twitchell retired many a time to their room between 7 and 8 o'clock; very often Mrs. Hill, after Mr. and Mrs. Twitchell had gone to bed, would bring the newspaper and read the news to me; I went to bed at all times before 10 o'clock; Mrs. Hill usually stayed up after I went to bed; Mrs. Hill generally attended the door; have heard the bell ring after going to bed; but if my door was closed in the winter I did not hear it; in the summer I heard it, because my doors and windows would be open and hoisted; Mrs. Hill attended the door after I went to bed; she carried a candlestick and candle through the house at all hours of the night; I have seen her with a candle in

the yard after 12 o'clock at night.

Cross-examined. Live in Richmond; am out of employment; went to Mr. Lewis' in Walnut street, after I left Mrs. Hill's, and lived there until about four weeks ago; am married; there was no other servant in the house while I was living with Mrs. Hill; the two months I was away was during the winter and I came back last spring; Mr. and Mrs. Twitchell would go to their room immediately after supper, unless he read the paper; he came home to dinner on week days, but seldom on Sundays; believe there was a lounge in his room; was in there but twice; there was no fire there last winter; when I was in the room it was daytime, and was never there at night, and do not know what they did when they went there. Mrs. Hill had the care of her two dogs herself; they used to follow her about the house, and were generally with her. Mrs. Twitchell's dogs I always saw taken with them into their room after tea; don't know where Mrs. Hill's dogs slept; they went to bed with her when she went to bed; they used to lie under the sofa, or about it, up stairs, in the dining-room, until she went to bed, so far as my knowledge goes.

The following witnesses testified that the prisoner's character for peace, good order and humanity was good: *John R. Sickles, Samuel Willis, Joseph Norris, William Middleton, Robert Hughes, James Logan, George Holloway, Daniel Outerbridge, Isaac Keitz, Horace Hamil, Jacob Hinchman, Albert Daniel, Leonard Fisler, Bartle Kelly, Leonard Jump, Phylis Fisler, Charles Kidd, William Zeiss, J.*

S. Thorn, John McCullough, George Horne, Samuel Limes, William Gregg and Charles M. Hollingshead. These witnesses had known the prisoner for periods ranging from four to twenty years, and include the time he had lived in New Jersey, at Carpenter's Landing, and while he, (four years ago) did business in the Dock street market.

James P. Meade. In April 1866, Mrs. Twitchell and Mrs. Hill purchased silver plated ware and the bill was made out to Mrs. Twitchell.

John C. Hopkins. In April, 1866, I sold queensware, and it was charged to Mrs. Twitchell.

James H. Cornwell. In May, 1866, Mr. and Mrs. Twitchell and Mrs. Hill selected carpets, and the bill was charged to Mrs. Twitchell, and Mr. Twitchell paid the bill.

George J. Henkels. Sold a bill of furniture in May, 1866, and Mr. Twitchell paid the bill.

Ellen Dolan (recalled.) Mrs. Hill used to come to the kitchen and talk to me; she said to me several times that the house and furniture, and all in the house except the piano, were Mrs. Twitchell's; that all was bought in her name; I asked her how about the piano, and she said that was "Milla's," if she would learn to play.

Thomas E. Carter. Knew Mrs. Hill in her lifetime; recollect a conversation with Mrs. Hill about this property; in November, 1866, she came to purchase house furnishing articles; she seemed very familiar and asked me what rent I paid, told her four hundred and fifty dollars, and she told me I could have had her store for three hundred and fifty dollars; told her I wanted

a house and store together, and she said I could have had the house; I asked if she did not live there, as I supposed she did; the house was Tenth street, above Walnut; she said she did not live there, as she had bought a piece of property at Tenth and Pine for the children, and was then living with them.

Charlotte Eisenhauer. Knew Mrs. Hill at the time and before she went to Tenth and Pine; she came to see me very often some years ago, but not within eight or nine months; saw her last in her house at Tenth and Pine; was there six or seven times; Mrs. Hill showed me all over the house, and said it was too large for her, but she bought it for Camilla, so that she could have a nice home; at another time she said, "whenever I can get possession of my house up Tenth street I shall move back, for I feel lonely in this house, it is too large." When she showed me the parlor she said she was a good mother to Camilla, for she and George wanted to live in style.

Cross-examined. She took me through the house about four weeks after she moved there; Mrs. Twitchell was present at the time; I think April last was the last time I saw Mrs. Hill; it was then she spoke of getting possession of the house on Tenth street, near Walnut.

R. B. Essler. I corroborate the testimony of Mr. Dobbins in regard to hearing sound in the house at Tenth and Pine; I remained in the dining-room, stamping and hallooing and crying murder; while the other gentlemen were in the back bedroom; then changed my position to the bed-room and listened to the others who were in the din-

ing-room and could not hear any noise; it is twenty-two to twenty-four feet from the back bedroom to the door of the dining-room; the doors are very thick—two inches.

Mr. Hollingshead. Examined the prisoner's stock of goods at Camden, and found, by count, 59,328 shingles; the machinery in the place is worth at least \$5,000; counted today, in addition to the 59,328, about 5,000 common shingles.

Cross-examined. The shingles now belong to a Mr. Wallace; he furnished the logs; the defendant is indebted to me \$130.

John McCullough. The real value of the property at the stable owned by the prisoner was about \$1,200; it has been sold, and realized \$960.

Cross-examined. It was a set of shingle harness, a set of double harness, a horse, and he had a horse and colt in the country, which were sold together; he had no phaeton at the time of the sale; the sale took place about three weeks ago; since the murder; the phaeton was sold a year ago; these were driving horses.

John Crump. Am a builder; have known Joseph Gilbert eighteen or twenty years, and knew other persons who knew him; his character for truth is very bad; consider him a dangerous man; could not place reliance upon what he swears to.

Cross-examined. Ceased to be good friends with Mr. Gilbert about 1852, never spoke to him but once since.

J. S. Thorn. Have known Mr. Gilbert three years; his character for truth is bad, and would not believe him on oath.

Cross-examined. He has me

under arrest to keep the peace; he has issued a writ of replevin to recover goods from me.

Wm. Zeiss. Mr. Gilbert's character for truth was bad.

Cross-examined. Heard Mr. Crump, Mr. Esler, Mr. Thorn and Mr. McCullough say his character for truth was bad; can not mention any other names; heard Mr. McCullough say so since this trial.

William Gregg. Have known Gilbert since July last; met him a few times at Vanlee's stables; his character for truth is decidedly bad.

Cross-examined. Heard Mr. Vanleer and Mr. McCullough speak of it; Mr. Vanleer said he came there and said things he did not believe; Mr. McCullough said he made false statements several times; Mr. McCullough spoke of it a month ago; about the same time heard Dr. Taylor say he would not believe him—that he was a dangerous man.

Robert B. Esler. Have known Mr. Gilbert since 1854; his reputation for truth is bad.

Julius Fink. Have known Mr. Gilbert since 1845; his reputation for truth is bad. Have been compelled to sue Mr. Gilbert for money.

George Horne. Have known Mr. Gilbert three years; his reputation for truth is very bad.

George S. Twitchell, Sr. Am sixty-five years of age; at the time this happened I was living in Thirteenth street, near Vine; I am a widower; my wife died sixteen or seventeen years ago; she died in my house in Tenth street, opposite the Jefferson College; she never was insane; she never was in an insane asylum.

Mr. Hagert objected.

Mr. Mann said he thought his

duty to this man required him to make the statements he was about to give. Over one hundred thousand copies of the story had been circulated before this trial, that this witness, by his conduct, drove his wife to the insane asylum. He will be pointed out as the man who did that thing, and we want to show this jury at the outset that this witness is not the George S. Twitchell who drove his wife to the insane asylum.

The COURT sustained the objection and the evidence was not admitted.

Mr. Twitchell. Was sent for on the night of the murder; was with Mrs. Twitchell all night and did not see my son until the Coroner's inquest was held; Mrs. Twitchell gave me some articles of jewelry when she was about to be taken into custody.

S. W. Gross, M. D. Am a physician; I am one of the lecturers at Jefferson College; one of the colleagues of Dr. Levis; have had large experience in surgical maladies and diseases; am familiar with blood stains; have examined the clothing produced in this case as carefully as I could in three hours' examination; examined it last Saturday; examined it with the naked eye and with glasses; not with the microscope; that would only have satisfied me that the blood was that of a mammal.

Mr. Mann. Are you enabled to account for the sprinkled spots upon the coat, vest, and pantaloons, upon any other theory than that of infliction of wounds by the wearer of the clothes? I am. Upon what hypothesis or theory? I think the spots could have got upon the coat, the vest and the pantaloons, and upon

the boots, with the exception of the upper side of the left, boot, high up, unless the pants had been rolled or pulled up. What is your theory? The spots on the boots could be made by stepping into the blood in the yard, in carrying in a body from the yard to the kitchen, and by bathing the head. Could you account for these sprinkles upon the clothing by the falling back of the head into a pool of uncoagulated blood? I could. If the prisoner's body had been in a stooping position, and when the head was raised it had fallen suddenly backwards, and a quantity of blood had fallen from the wounds in the head into the pool of uncoagulated blood beneath, might or might not these sprinkles upon the clothes have been thus made? Very many of them. Do you feel very confident of that? I do. Could or could not the sprinkled spots upon the right sleeve have been very readily made in this way? I think they could. Could you account for any of these spots by the shaking of the head? I could. Can you explain any of them as being made while bathing the head? I could. Be good enough to explain how? Do you refer to the sprinkled or smeared? I refer to the sprinkled spots. Sprinkled spots of diluted blood might very readily be thrown upon these articles of clothing, which have been enumerated, by carrying the hand, holding the substance with which the head was bathed, to the vessel containing the water, to the head, and from the head back to the vessel. Could you as a surgeon, calm, cool, and collected, have performed this operation of bathing the head without sprink-

ling your own clothes? I could not, unless I protected my clothes.

Cross-examined. The penetrating wound could not be inflicted with the dipsie, and you could not make it with the poker, not such a penetrating wound as this, where the surrounding bone was broken; the tongue of the poker would make a clean cut; lacerated wounds on the head might be produced by a poker; a skull is not necessarily strong because it is thick; in old age it is said the bones of the skull become more brittle; there are cases in the books of fracture of the skull with an ordinary walking stick.

Mr. Hagert. Do you not know that in Gottlieb William's case a skull had been fractured with a cane? I do not know anything about the medical testimony in that case. Do you not know that in the Webster case he killed Dr. Parkman by striking him on the head with a piece of grape vine? I do not know.

Dr. F. F. Murray. Am a professor at Jefferson College, and Surgeon at the hospital and colleague of Dr. Levis. Have read the evidence in regard to carrying the body into the house, and the bathing of the head by the prisoner, and have examined the head with the naked eye, but not chemically or microscopically; noticed the marks of what I believed to be sprinklings; these sprinkled spots, the circumstances being favorable for the non-coagulation of blood; when an individual is handling a body dipped in blood, experience has taught me that it was impossible to do so without the person manipulating getting more or less bloody; there must be two causes

at work at the same time, to produce a smear and a sprinkle; it is a possibility that the sprinkles came from carrying the body and bathing the bloody head, if the effort was a protracted one; if in raising the body the head had fallen back in the pool, many of the sprinkles could have been formed; the sprinkles would have taken place in all directions.

Cross-examined. It would be a difficult matter to determine a month after the blood on these garments, whether it was diluted blood; blood in a cold atmosphere will not coagulate so rapidly, might be a half an hour; in carrying a body and stooping over to raise it, the legs of the pants would be likely to receive the most of the sprinkles; I found very few on these pants; not near so many as on the coat sleeve.

Sarah Bouvier. I lived with Mrs. Hill at Tenth and Pine, a year ago; was there five weeks; had every Thursday afternoon and every other Sunday, out. While I was there, they were on good terms, and never knew Mr. Twitchell to be out after ten o'clock. After supper Mr. and Mrs. Twitchell usually retired to their bedroom.

To *Mr. Mann.* Mrs. Hill used to shut up the house while I was there; went to bed about ten. Mrs. Hill and I used to sit in the kitchen after Mr. and Mrs. Twitchell went to bed, about an hour, or half hour. I left her up, and she would go about to see if the house was fastened. She was old and forgetful, and one morning, when I got up, I found the door on a crack. I was at Mrs. Hill's about six weeks before she was killed; it was in the afternoon; Mrs. Twitchell was read-

ing the paper beside her, and was kind and affectionate to her. Mrs. Hill at that time was very kind and cheerful. Have been present when money was paid to Mrs. Hill; a man came there one evening and paid her; she put the money in her bosom; she carried money in her bosom sometimes; have seen her have packages of greenbacks.

Cross-examined. Was five weeks in the house; didn't know Mrs. Hill before I went there; all this attachment and fondness arose in the five weeks; I left because when I would be working she would tease me; I didn't wish to stay, because I could not get along with my work with her; did better when she was away; I mean when she was out of the room; she had her way of working, and I had my way; she liked my way, but she kept me back; I wanted to get through with my work, and she wanted me to work slowly; could not say how long after I went there that she got to be confidential—it was two or three weeks after I got there. She said she bought the house and furniture for Mrs. Twitchell.

Charles Altgelt. Reside 825½ Locust street; am agent for the Penn Mutual Insurance Company; am in the habit of attending church at Eleventh and Lombard; was at that church the night Mrs. Hill was murdered; am a member of the choir; left church about nine o'clock; on my way home I passed by the house; it was then after nine o'clock; can't say how many minutes; but as I turned into Eleventh street it struck nine o'clock, so that it might have been two, or three, or five minutes; when I got to the house of Mrs. Hill, saw two men

leave the house; they came out the front door; they went across the street to the corner of Tenth and Pine; didn't see anything more of them; they disappeared from sight on the upper corner of Tenth and Pine, going up Pine; the man was very tall—I can't describe but one man—the tall man had a long overcoat; but I could not say anything about their faces. His coat came down considerable, because it attracted my attention for I have seldom seen such a long coat. It was a dark coat. He was very tall; didn't take any notice of the other man; when I came across the lower side of Pine street I did not walk on the flagstone, but cut across to the corner. I went from the lower side of Pine street to the northeast corner; when I came to the corner I saw the door opened from the inside and these men came out.

Cross-examined. Went across from the furniture store, on the lower side of Pine, next to the corner of Tenth; I crossed to the northeast corner; I cross that way, from one side to another, often. When I say I went straight across, I mean I went to the corner. I started for the northeast corner; can give no reason for doing this except it is a habit of mine; I went to the nearest corner; I think it was the northeast corner; know the points of the compass; may be mistaken in saying the northeast corner, but to the best of my knowledge—but I may be wrong. You tell me which corner Mrs. Hill's house is, and I could tell you.

Mr. Hagert. That is what I don't mean to do.

Altgelt. Then I went to the opposite corner from Mrs. Hill's,

on Tenth street; went along the upper side of Tenth street to Clinton street; when the men came out of the door they went to the corner where I came from. When I first saw them I was on Tenth street, right opposite Mrs. Hill's house; the first thing I noticed was the dark entry, when the door opened; the dark entry attracted my attention; a light entry would not be more likely to attract my attention. The tall man came out first, and the other man came out.

Dr. William Paine. Am a surgeon; have been practicing about twenty-six years; am a lecturer at one of the colleges, on the principles and practice of medicine. Have had experience in the examination of blood stains; saw nothing in the examination of the clothing that could not be accounted for by handling a bloody body; understand that the gentleman was applying a wet handkerchief to her head, and my experience is that you will be sprinkled more or less unless you are protected. The blood corpuscles might be held in a small quantity of water, and be in that way carried to the clothing. They would be likely to leave a minute sprinkle, or spot.

Mr. Mann. If that poker had been driven into Mrs. Hill's brain, would not some portion remain upon the poker? I certainly think so. I have not been able to find any on this poker. Any instrument, smooth or otherwise, would retain some of the brain tissues. I cannot see anything on the poker to show that it has ever been brought into contact with any bony structure.

Cross-examined. If two hours had elapsed, or an hour, or a half, after the blood got upon the

coat, it might not be absorbed, for it depends upon the quantity. Blood, to coagulate upon a coat, in a house and with fire in it, depends upon circumstances. Sometimes, where death is the result of a shock, blood does not coagulate; violence, and sudden blows, it is supposed, arrests the coagulation.

Messrs. Wilber, Thorp, Holt, Cassidy and Clift testified to ex-

periments made by them to see if the front door of the house could be unlocked without making any noise which could be heard by people on the outside. They in each others' presence tried it several times, and those who were listening on the pavement could not hear the sound when the lock was turned on the inside.

EVIDENCE IN REBUTTAL.

John McArthur. Have known Mr. Gilbert for twenty years and have never heard his character questioned by any one except his late partner, Mr. Thorne; would believe him on his oath.

Messrs. Uhrey, Stotesbury, Page, Fling, Titus, Rev. John Chambers, Oxford, and Dilworth, testified that they had known Mr. Gilbert for a number of years, and had never heard his character for truth questioned, and they would believe him.

Dr. Pancoast. Am demonstrator of anatomy at Jefferson College, and surgeon at the hospital. Blood in the open air, flowing from a person on the pavement, might take from three minutes to half an hour to coagulate; have seen a cup of blood coagulate in ten minutes. In sickness, under extraordinary circumstances, diseased blood in the body might not coagulate for three days; blood on a pavement, in forty-two degrees, would coagulate, some of it, almost immediately.

Cross-examined. If blood continued to flow as the body lay on the pavement, on her hair and clothes, so as to be in a pool under her head, the mixture of new blood flowing would not sen-

sibly affect the coagulation upon so large a surface.

Dr. Allen. I am connected with the University of Pennsylvania. Blood, flowing from a large vessel, coagulates more slowly than blood from a small one; blood from the wound on a temporal bone would coagulate in about half an hour; from the character of the wounds described here, I should say half an hour; falling upon a pavement would be favorable to coagulation.

Dr. Morton. Am surgeon at the Pennsylvania Hospital. Blood on a pavement, with the temperature at thirty-seven degrees, will coagulate in from thirty to forty minutes; have seen blood coagulate in two minutes.

Dr. Thompson. Blood exposed to the air will coagulate in from two to five minutes, depending upon the quantity; it would coagulate more readily on a pavement.

Edward J. Post. On the night in question was at the southeast corner of Tenth and Pine streets from half past eight to a quarter of nine. Mrs. Hill's home was in my full view. If any one had come out of the front door, I certainly would have seen them.

Saw no one enter or leave and heard no noise.

Mr. Wayne. Left Kemble street, above Twelfth, at nine o'clock and walked down Twelfth to Pine and down Pine on the south side, reaching Eleventh and Pine a little after nine. Did not meet the two men described by Mr. Altgelt, or any one on Pine between Tenth and Eleventh streets. Heard no noise.

Milo Lord. Was at the north-

east corner of Tenth and Clinton streets, near the church, at five minutes past nine. Saw no persons coming along Tenth from Pine as described by Mr. Altgelt. Saw no one cross over South Tenth street.

Officer Warnock (recalled). With Mr. Stevens and Mr. Atkinson I turned the lock of the front door several times and it could be clearly heard by persons on the outside.

THE SPEECHES TO THE JURY.

MR. HAGERT, FOR THE PROSECUTION.

Mr. Hagert. I would urge that, if the courts of the law failed to reach this criminal, a reproach would be thrown upon the jury, from which they could never hope to recover. The Commonwealth in this case has presented such an array of testimony against the prisoner as was never before seen in this court. There had been before poor men convicted upon testimony much less than is here presented; but whether the prisoner be rich or poor, the present case is the strongest ever presented, and points unerringly to the guilt of the prisoner.

First, we have this woman, as the prisoner's mother-in-law, and residing with her in the same house; they had tea at the usual hour, and Mr. and Mrs. Twitchell were the only persons found in the house when the servant girl returned that night; there was, therefore, every facility for the murder by the prisoner. She was no doubt murdered in the dining-room; while on a sofa, with the right side of her face exposed; there was blood on the sofa, on the floor, on the wall, and on the chandelier. There was no evidence of a tussle or wrestle. Next, there was the poker as the instrument, for upon it was found blood, a gray hair, and fragments of some woollen substance. The body was thrown from the back sitting-room because it was dark, and jutting against a blank wall, was the darkest spot in the yard, and where the party engaged would

be least likely to attract attention. There is every indication that the murder was committed by some one who was familiar enough to sit there and smoke his cigar while he talked with Mrs. Hill. I can imagine that the defendant and Mrs. Hill talked about a number of subjects, and then determined that it was necessary to murder her. He went to the kitchen for the larger poker, and then dealt repeated blows upon the head of one who was not suspecting violence. Mrs. Hill being economical in the use of gas had put the gas out in the kitchen and the prisoner was obliged to get the candle in order to secure the poker. The murder was then committed. What is the next thought? The prisoner knows that he must not leave the house and he could not conceal the body, and therefore he concluded to convey the impression that she had fallen out of the window. After he throws the body out he thinks the blood in the dining-room will destroy this theory, and he determines to make it appear that she was murdered in the yard, and by some one else. This was the explanation for placing the poker in the yard under the body. In order not to make a noise he carried the poker down stairs and placed it by the body. If this man carried the body either by himself or with assistance, it was carried with care and required the use of both hands, and hence the poker was not carried then. The woman was thrown out head foremost, and would come down doubled up and in a heap. The fact is that the body had been composed by some one afterwards, and the clothes arranged before Sarah Campbell reached the house, and then it was that the poker was placed there. This accounts for the candle in the kitchen, as the prisoner used it to come down with the poker. He endeavors to divert suspicion from himself, and therefore he leaves the back door open, in order that those who discover the body shall believe that outside parties entered by that way. He knows that Sarah Campbell is about to return, and he endeavors to impress upon her, by representing that he just came from bed. He, therefore, takes off his white shirt, collar and cuffs. This accounts for the blood on the blanket, for he had just taken off

the under-clothes and thrown them negligently on the bed. He takes it off in order that it may be believed that he had been abed. When Sarah Campbell returns, and rings the bell five times, the prisoner concludes that he has convinced her that he has been in bed, and he then partially dresses himself to answer the bell. He unlocked the door. There can be no doubt of that, for Sarah Campbell, who has been delayed in her attempt to enter, must have listened attentively to hear some one come. The first thing he says is, "I wonder where mother is?" As Sarah had been out all the afternoon and he had been in, the remark had no meaning, except that it was the effort to still throw suspicions from himself. He remarks, "We'll see," but he does not assist, and the girl had to call him twice after she discovers the body. In coming in from the entry, he could not fail to see the light in the kitchen and the doors open, and the air rushing in the house, and as he had just wondered where mother was, should he not naturally have gone into the kitchen to discover the meaning of this light and the open doors? Instead of this he goes up stairs. After the body is found he made the feigned expression of anguish—"will no one help me to carry her in?" and he continues to hold the head long after everybody had pronounced her dead. He does not go for a doctor, as others would, but stands there while strangers go. He did not express any anxiety to know how the murder was committed, how anybody got in the house, and he never suggested any search of the house, leaving to his neighbors to discover how it was done. What first struck Mr. Morrell? That no stranger would have exposed himself by throwing the body out of the window, and he then charged, in the presence of the prisoner and his wife, "One of you two committed this murder." To this the prisoner made no reply. He was then taken into custody. Up to this time all the witnesses agree that the prisoner had on no white shirt. When he went up with the officer to change his clothes, two dogs were found in the prisoner's bedroom, and they barked at the officer. He puts on the white shirt and vest, but he leaves the collar and

cuffs behind. These were not on when he put on the coat. At the station house he explains the spots on his shirt by saying he got them on by carrying in the body. This was a falsehood, for he then began to realize the dilemma in which he was placed. He then gave up all hope, refusing counsel, and exclaiming, "It is a fatality!" The smeared spots and soaked spots can be accounted for by the carrying in the body, but the hundreds of minute sprinkles can only be accounted for, as Dr. Levis does, by an open artery or the dash of a weapon upon a bloody surface.

The defense will probably abandon the theory that the sprinkles on the prisoner came from the hair, as it cannot be forgotten that this body had been raised and carried before it was found in the yard. It was carried through the dining-room without sprinkling the floor!

In regard to the motive, legal proceedings were about to be brought against him, and his financial embarrassments were so great that notes were coming due without a balance in bank sufficient to meet them. On that Sunday night Mrs. Hill, no doubt, threatened to withdraw her support, and throw him upon his own resources. The defense had introduced character. And yet Dr. Webster, a respectable man, killed Dr. Parkman because he held a note of his for \$1200.¹⁴ If the chain of circumstances has been forged link after link until it winds around him like a serpent of fire, from which he cannot escape, we will ask you, not only for the sake of justice in this Commonwealth, but for the protection of society and your own sakes, to say that he is guilty.

MR. O'BYRNE, FOR THE DEFENSE.

Mr. O'Byrne. Gentlemen of the jury, to you is committed the all of the prisoner at the bar. In the dark hour of his agony, when the clamor of an insulted people, lashed into fury by the press, intensified and directed by the agents of the law, who demand a victim at their hands, the hopes of safety and release from peril rest upon the great bulwark of

¹⁴ See 4 Am. St. Tr. p. 93.

American liberty—trial by jury. Few men respect public opinion more than I do, but that unnatural public opinion which has been fostered and inflamed by over-zealous men; that public opinion pampered by a belief of its necessity and infallibility; that public opinion, whether expressed in newspapers or bagnios, which demands life and liberty to appease its bloody appetite—a public opinion, not of yesterday, but that was old and corrupt when it invaded the Halls of Pilate and cried out for the release of Barrabas and the crucifixion of Christ—that kind of public opinion I spit upon, in the spirit of contempt which one feels for a slimy reptile I would kill but not touch. Calmly, but not coldly, were the jury to judge that which God alone can give—life. I feel satisfied that, after an examination of the case against this prisoner, with an eye only to the evidence and their duty, the jury will render a verdict which will fling open the prison doors, dissipate the foul calumnies which blacken the prisoner's fair fame, and restore him to his father, to his wife, and to society, of which he has always been an honored and cherished member.

The cardinal maxims which ought to hang over the accused were: "Every person is presumed to be innocent until proved to be guilty," and, "it is better that many guilty persons should escape than that one innocent person should suffer." The presumption of the innocence of the prisoner were: first, as a legal presumption; secondly, from a total absence of motive; thirdly, from the utter failure of the Commonwealth to establish a case of circumstantial evidence so complete and conclusive in its character as at once and forever to exclude the possibility of the prisoner's innocence. The legal presumption of the prisoner's innocence must be first overthrown before it could be questioned how far the prisoner is guilty; but assuming there is enough in the case of the Commonwealth to destroy this presumption, it must be next shown that a motive existed to induce the prisoner to commit the crime. The Commonwealth has not established this.

Will this jury convict a man upon the contradicted evidence of a medical expert? It would be a disgrace to the jurisprudence, to the most savage race, to walk a man to the gallows under such circumstances.

It was argued that the manner of this man ought to be taken as an evidence of guilt because his grief was not demonstrative. Was not Sarah Campbell, truthful, though stupid, as capable of giving an account of this man as Mr. Morrell? The witness Doster says this man cried out, "Mother! mother! my poor mother! Will no one help me?" In one breath the Commonwealth say this man was poor, and in the next charge him with wallowing in wealth when he came to his defense. If George S. Twitchell was the desperately poor man spoken of, and had wronged his mother-in-law, as Gilbert would make us believe, would she loan him \$50 and take his due bill and place it among her valuables in the wardrobe?

It has been shown his character from early boyhood to mature manhood was without spot or blemish.

And now, gentlemen of the jury, remember you stand almost in the relation of God to the poor prisoner at the bar; with power to make or unmake; to let live or destroy. And oh! gentlemen, be like unto Him in tempering your judgment with mercy. Glorifying yourself so far as it is allowable to your frail humanity, to do so with His benignity and mercy. Remember that the day will come when the archangel's trump will call you before another bar, where God Himself will act as judge, where you will be imploring mercy from the Great Judge. As you expect mercy upon that great day of wrath and dread, when the heavens and the earth shall be rolled together as a scroll, the mercy you now show will plead for you before that gracious Judge; but, oh! remember, that if any considerations but that of an inflexible determination to give the prisoner at the bar the benefit of every doubt should enter your judgment, if you should be swayed one hair's breadth from giving him all the mercy his case demands, then that gracious Judge will turn into an inflexible Judge, and in the

appalling voice which met the ears of Cain He will thunder out, "Where is thy brother Abel?"—and, not answering, he will say, "Depart from me;" and in your sight the sentinel at heaven's portal will close its ponderous gates upon you for God's eternity.

MR. MANN, FOR THE DEFENSE.

Mr. Mann. The Commonwealth's officer has told you that he has presented to you a chain of circumstances that are like a strong wall about the prisoner. I think I can show you that they have, by the assistance of some over-zealous men, some false men, and some malicious men, only brought fag-gots for the fire from which the truth will rise, like the fiery phoenix, resplendent with its own glory. Now, gentlemen, what would the Commonwealth have you believe? She would have you believe that this young man, living in this house, on that Sunday night about 9 o'clock, instead of being in bed, as was his usual habit, was sitting up in the dining-room. That the old lady went to sleep while he smoked a cigar. That he watched a favorable opportunity, and either went down stairs for the poker or came up stairs with it, and then hit the old lady over the head with it, afterward throwing her body out of the window, washed his hands and went to bed. Now this is one of their theories. What is another? They seek to make you believe that he was alarmed by the ringing of the bell, that he threw the body into the yard, took off his cuffs, collar, boots, shirt, coat, pantaloons, and then hurried to let the girl in. Do you believe, gentlemen, that any murderer ever did such a thing? Now, what is another of their theories? They may have forty for aught I know. They may say that he was in the room with her—that he got the poker—struck her with it—but instead of striking her with the tongue struck her with the heel—struck her in the temple. Their theories are many and conflicting. What do they mean? We have not heard yet. We don't know what their notions are about this. The counsel for the Commonwealth tell you now, perhaps, that she lay asleep, that he was by her, that he came up stealthily and struck her with the poker, and then went to

bed. Do you, gentlemen, believe such a story as that? Why, there can easily be conceived a thousand ways to murder her, with but small chances of detection. Then they say this poker did the deed, and they cling to that pet theory, for it is true some one who must have been familiar with the house found the poker, and that man must have been George Twitchell. This is the greatest mistake the Commonwealth has made. We have shown you that had this poker been used upon Mrs. Hill's skull, it would have been battered and bent, and would have borne unmistakable evidence of it. Do we find any such upon it? We find a smear of blood upon it. Is that strange? The poker was found lying under her head in the pool of blood. Is it strange that there should be blood upon it? There is one gray hair upon it. Is it not perfectly natural that it should have got there by its being thrust under her head. This is nonsense to argue away a man's life from such trifles as these. The murderer took his weapon away with him, and, as Lady Macbeth with the sleeping grooms, they left George Twitchell's weapon stained with blood beneath their victim, in order to throw suspicion upon him.

Mr. Mann showed in how many different ways blood could have got on the prisoner's clothing. The Commonwealth had wanted the prisoner to perform a miracle, to put his shirt on underneath a bloody coat without getting the marks upon it. Medical experts had told you that it was impossible for them to perform a dissection, however carefully, without getting some blood upon their clothes, sometimes in the most out-of-way places. If the blood on the shirt is diluted with water, that is the end of the Commonwealth's case. Their whole case rests on these clothes, and any doubt as to how the blood came on them results to the benefit of the defense. You slaughter judgment on her justice seat if you do not properly weigh this evidence. The Commonwealth know that this murder was committed for the purpose of obtaining ready money. It is one of the great truths of this case that Mrs. Hill was in the habit of carrying large amounts of money in her bosom. She never kept her money at a bank. The Com-

monwealth had endeavored to prevent this fact from being known to the jury. There were eight thousand dollars in her possession which are unaccounted for. The Commonwealth had been searching for this money throughout the house, and even the privy had been cleaned, although they now attempted to deny its existence. This great truth is that which paralyzes them. They would like to have that part of the evidence out of the case. It cannot be departed from. Now, if she had this amount of money in her bosom, how, then, are you able to account for the surroundings of the murder? We will suppose that she was asleep and that she was struck by such an instrument as a dowsy. Why should the prisoner have thrown the body out of the window? He would have escaped all suspicion if he had allowed the body to remain in the room, as the hired girl would not have been as likely to enter the dining-room as she would the kitchen or yard. How farcical! that he should have thrown her in the very path of the servant. He could conceive, however, a state of facts why another man or party of men should have thrown her out of the window. Two men, in order to avoid detection, might have separated, one to strike the blow in the dining-room, and the other to station himself in the yard so as to obtain the money from the bosom of her dress as soon as she was thrown out. Crime seldom moves alone. Every indication showed that this murder was the work of two persons, and that the weapon used was a powerful one. *Mr. Mann* closed by pointing out the different ways by which the men might have obtained admission to the house.

MR. SHEPPARD, FOR THE PROSECUTION.

District Attorney *Sheppard* said he entered upon the discussion of this subject with the simple purpose of doing his duty to his God and his fellow man. He would cite the material points of the case. The entire community had watched this case with intense anxiety. They looked upon this jury to vindicate the dignity of justice. He asked the jury to purge their minds of the idea that circumstantial evidence must be

received with suspicion. It must be scrutinized, of course, the same as direct testimony, but should have the same weight if we wish to arrive at the facts. We must first look at the actor in this bloody drama from the beginning of his appearance on the stage. The first scene commences with the ringing of the bell. The bell was in the kitchen, and the kitchen door was wide open, so there could have been no difficulty in the transmission of its sound. It was rung once, twice, three times, a half dozen times, until it was pulled violently so that it could be heard in the cellar of the adjoining house. And yet in this house of crime we are to suppose that it was not heard. And why? Because Mr. and Mrs. Twitchell were asleep. This is a suggestion of the counsel for the defense, but there is no evidence to show that they were asleep. You are not to listen to what the lawyers have said, but what the witnesses have said. He denied that they were asleep. He next described the prisoner's behavior, and went on to say that there was a fatality surrounding him. When confronted with his own acts he surrendered himself. All nature pointed its finger at the guilty man. The acts, words and demeanor of the prisoner of that night are among the great facts in this case. Then we have the prisoner's bloody clothing, the blood on the knobs of his sleeping-room, the bloody blanket on his bed, the bloody towel, and all the other articles that have been produced. He was the only man in the house; his demeanor indicated his guilt; his clothes fastened it upon him, and he made no attempt to show that any one else had committed the act. In the next place he gives an untrue account of the affair, saying that she fell from the window, and makes no attempt to give any other possible explanation. These circumstances demand conviction, even if they stand alone. The Commonwealth's case is made out by these facts, and we have only now to deal with the explanations that have been made, both in the argument and testimony which is supposed to support the defense. They had dealt in nothing but possibilities. This defendant cannot escape in such a way; his defense must be a fair and reasonable one, not mere conjecture

and guess work. *Mr. Sheppard* dwelt fully upon each material point, both of the Commonwealth's case and the defense, and concluded with a warm and eloquent exhortation to the jury to stand firm to their oaths and keep within the law and the evidence, and to administer the law strictly, thereby putting a stop to the spirit of murder that stalks at large in our community, not sparing the defenseless woman or the helpless babe, or the peace of the holy Sabbath day.

THE JUDGE'S CHARGE.

JUDGE BREWSTER. Gentlemen of the jury: It is now over a fortnight since this trial commenced. During the whole of this considerably protracted investigation I have noticed the marked attention and patience with which you have watched the progress of the case.

Such interest in the discharge of duty deserves all praise, and this is especially your due for the uncomplaining manner in which you have borne the hardships of being separated so long a time, at this season of the year, from your families and from your daily pursuits. The case has been prepared by the counsel on both sides with great ability, and has been presented and urged with marked ability and learning.

Where their labors end, your task begins. It is therefore my duty to explain to you the law as applicable to this case, and to render you such service as it may be in my power to place at your disposal, to assist you in the responsible office of applying the law to the facts.

I deem it quite unnecessary to remind you that the case is of the first importance. The community have the right to expect that the law shall be the shield of the unspotted, and that no guilty man escapes. A defendant has a right equally as sacred when he demands of us to see to it that no innocent man is punished.

I shall divide what I have to say to you into two general heads, the law and the facts.

As to the first I do not understand that there is any question raised here on either side, which requires me to trouble

you with definitions of the various grades of homicide. We understand—but this is entirely for you—that all the counsel agree as to one element of this case, and that is, that whoever perpetrated this deed was guilty of murder in the first degree. It being conceded that Mrs. Hill is dead, that her death was the result of unlawful and malicious violence, marked with all the elements of premeditation and deliberation, I might pass at once from this branch of the subject.

It is proper, however, that in a case of so much magnitude, nothing should be taken for granted. I shall therefore read to you our statute upon this subject. It is in these words: "All murder which shall be perpetrated by means of passion, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing; or which shall be committed in the perpetration of or attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder in the first degree, and all other kinds of murder shall be deemed murder of the second degree, and the jury before whom any person indicted shall be tried, shall, if they find such person guilty thereof, ascertain in their verdict whether it be murder of the first or second degree. (Act of March 31, 1860, § 74. Br. Dig. 230, § 82.)

You will therefore observe that the statute recognize two degrees of murder. Murder is the unlawful killing of a human being with malice aforethought, express or implied. When in addition to these elements the crime is committed with wilfulness, deliberation and premeditation, it is murder in the first degree. All other kinds of murder are deemed murder of the second degree.

Having ascertained the law of the case, we must next deal with the facts. These we are to gather from the evidence.

Mr. Bentham tells us that all evidence flows either from persons or things. These are the only two sources from which we can expect testimony, and unless we resolve to let all secret crimes go unpunished, all civil disputes to remain undecided, and to throw away our reason, we must act upon the statements of persons or things. I say statements of things,

because if we consult the experience of every hour, we will be taught that inanimate objects have their voice as well as sentient beings. It is in vain, then, for man to say, that because others have failed in their efforts to detect error, he will sit quietly down and perversely refuse to apply his intelligence to the problems of life, whether they encounter him in the counting-room or the jury box. He might just as well refuse to use his legs, because others have fallen or been killed in walking. He might, with equal propriety, refuse to eat, because others have been poisoned while partaking of nourishment.

Some persons, admitting the force of the principle which actually compels us to act upon evidence, still insist that nothing but positive testimony should produce conviction, and adhering tenaciously to this favorite dogma of those who are too timid or too weak to exercise the reasoning faculties, with which a kind Providence has endowed them, they assail all circumstantial evidence. A moment's reflection, however, must satisfy all candid minds of the unsoundness of such a proposition. Suppose for a moment that this was the rule of our being, and that we had been so constituted that we could believe nothing unless it were demonstrated to us by our own senses, or by the statement of an eye-witness. What would then be our condition? Of course, we could not punish any crime, unless it were perpetrated in the presence of spectators. All secret murders, arsons, burglaries, forgeries and other offenses, could be committed with impunity. Nor would the mischief stop here. Few civil controversies could be settled by juries. No book of original entries could be received in evidence; no note or obligation would avail, unless there were a subscribing witness. Indeed, this would not be sufficient, for if he died before trial the claim would expire with him. An insurance on the life of the witness would not even avoid the difficulty, for the policy would die with its attesting witness. For the same reason, all receipts would perish with those who saw them signed, and all our deeds and muniments of title would be swept away by the death of the sub-

scribing witnesses, and the magistrates before whom they were acknowledged. All proof of handwriting by comparison being annihilated, commerce would be destroyed, or remitted to its infancy in barbarous ages. With the abolition of legal punishment for crime, mob laws and vigilance committees would supersede the use of courts and juries, and the whole framework of society would be impaired, if not destroyed.

The absurdity of the prejudice against circumstantial evidence may be still further illustrated, by reflecting for a moment upon the use to which we constantly and properly apply it. Not only do business men answer letters, pay drafts, and credit others to the extent of millions daily, upon the testimony of circumstances alone, but they commendably carry this faith, as the evidence of things unseen, into the reasoning which connects them with the world beyond our own. A trifling circumstance—the fall of an apple—has proved to the satisfaction of philosophers the great laws of gravitation, which control the motions of the universe.

The man who denies the existence of his Maker is properly regarded by many as thereby evidencing his want of reason. Yet what proof have we of this important and accepted truth except from circumstances? The same kind of testimony is the prop of our belief in all the great truths of revelation. If we turn from the world without to the great mechanism within us, we see again that no rational man pauses for one instant to doubt the force of circumstantial testimony. What evidence have we that it is a heart that beats or a brain that throbs within us, except from the fact that those organs exist in all similarly constituted beings? And we accept remedies for all the ills that flesh is heir to, upon precisely the same faith in circumstantial evidence. Chief Justice Gibson has given an excellent illustration of the force of this kind of testimony. He says (*Comm. v. Harman*, 4 Barr, 272): “You see a man discharge a gun at another, you see the flash, you hear the report, you see the person fall a lifeless corpse, and you infer from all these circumstances that there was a ball discharged from the gun, which entered his body and caused

his death, because such is the usual and natural cause of such an effect. But you did not see the ball leave the gun, pass through the air, and enter the body, . . . and your testimony to the fact of killing is thereby only inferential; in other words, circumstantial." The improvements of modern science furnish us with another illustration. You are in a telegraph office and see the battery in motion. A message is received. The station at the other end of the line may be a thousand miles distant. No human eye saw the subtle fluid pass along the wire, and yet you would hardly listen with patience to the man, or the argument, undertaking to reason to you that the message might have come through the air, or the earth, without the agency at the wire, and that all your evidence to the contrary was circumstantial, and therefore unworthy of regard. In short, a skepticism like this would open wide the door for the perpetration of all secret crimes, would uproot our faith in man, and destroy even our belief in a Creator and in a future state.

These are some of the evils which would flow from the declaration of a principle that we should reject all circumstantial evidence. On the other hand, the advocates of circumstantial evidence have pushed their preference for this kind of testimony to an extreme length, by exalting it above the most positive statements. They have cited the cases of convictions secured by perjury, and have somewhat exultingly declared that "circumstances cannot lie." This assertion has in its turn been denounced. Mr. Best speaks of it as a "dictum" which has led to mischievous results. And, undoubtedly, circumstances may deceive us, for they may be detailed by biased witnesses, may be arranged by enemies, and may be what Mr. Bentham and others call "false facts." To these or other sources of error may be traced the mistakes committed in the eleven cases which have been so often relied upon by defendants, and which have been so frequently cited in Judge Story's time as to be called by him "the common-places of the law." (U. S. v. Gilbert, 2 Summer, 19, 27.)

What, then, are we to conclude? Shall we refuse to believe

our senses because others have erred? Or shall we resolve to do our whole duty in life, making the mistakes of others our beacon lights upon the way? To resolutely conclude that we will not be governed by circumstantial evidence, is, as we have seen, to close our courts of justice.

It is susceptible of demonstration that positive testimony has produced very many unfortunate results. Falsehood generally fabricates direct evidence. And we could not even act upon confessions of guilt, for the trials of the Perrys, and of Captain Green and his crew (14 Howell's State Trials, 1, 199 to 1, 324) show that the fullest admissions of guilt cannot be relied upon. In the first case John Perry actually acknowledged that he was accessory to the murder of a Mr. Harrison, who appeared in full life after the execution of the defendant.

Let us, then, endeavor to ascertain the rules which should govern us in our efforts to reach the truth in a particular case. They may be briefly stated thus:

First. We must of course guard against the false statements of witnesses. This applies whether the evidence is positive or circumstantial.

Second. In cases depending upon circumstances we must take care to see that they could not have been arranged by others. Having thus tested the existence of the circumstances, we must apply the following rules, in order to decide upon their force or application.

Third. We should draw therefrom no inferences save those which are entirely fair and natural, and which are reasonably and morally certain.

Fourth. We must see to it that each fact on which we rely is independently proven, and that each is consistent with the other.

Fifth. Each circumstance relied on to produce conviction must be consistent with guilt, and with guilt alone.

And lastly. We must guard ourselves most carefully against any preconceived ideas, which might lead us to reason inaccurately from facts in particular cases.

According to Lord Bacon, there is a natural tendency in

the human mind to suppose a greater order and conformity in things than actually exist. Mr. Burrill (*Circumstantial Evidence*, 206-7) attributes this to our indolence, and to our precipitation; the commission of a great crime exciting an intense desire to bring the perpetrator to justice.

These, gentlemen, are our guides in every case. They have been gathered from standard authorities upon the subject, and have received the sanction of my learned brother, Judge Ludlow, in his charge to the jury in the case of *Commonwealth v. Miller* (4 Phil. Rep., 199). After a thorough examination of the authorities he thus sums up his views upon this subject: "Crimes are often committed in secret, and, but for the fact that circumstantial evidence may be produced, would go altogether unpunished. Nor is there, when closely examined, such a wide difference, so far as reliability is concerned, between direct and circumstantial evidence as is sometimes supposed. In direct testimony we look for the precise detail of facts; the witnesses testify to the precise facts in issue at the trial; but such are the laws of nature, regulating cause and effect, that a body of facts may be presented so linked together as to produce a firm belief of the fact to be proven. In direct testimony we may be misled by the perjury of a witness, and in circumstantial we may be deceived by the inferences which we draw from the facts."

It follows, then, that we cannot close our eyes or lock up our reason, in this or in any other case, because the evidence is circumstantial. Your oaths require you to examine it.

The task is from its very nature unpleasant, the difficulties may be great, but we must look straight forward and do our whole duty in the light of our conscience and our reason. The truth lies somewhere, covered up though it may be, with a terrible crime; but we must seek it out, and if we do so honestly and patiently, we shall surely find it. Of this, we may always be assured that Providence has given us the means of tracking out and detecting crime. He has stamped it with the curse that it shall be discovered, most frequently, indeed, with the fact that it shall be its own accuser.

The circumstances to which I am thus about to invite your attention may be divided here as elsewhere into two general heads—those which favor the presumption of guilt, and those which point to the supposition of innocence. The text-writers give to these heads the names of inculpatory and exculpatory evidence, and they subdivide each into classes which are of interest to the student, but which might tend to our confusion rather than to our enlightenment.

You will observe at the threshold of this examination that you must give to the defendant at every stage of your inquiries the benefit of his character, of the presumption of innocence until guilt is clearly established, and of every reasonable doubt. You must apply at each step what Bishop Butler calls “the truest judgment,” and keep steadily in view the rules already enumerated. You will also observe that no comment I may make on the evidence is in any way binding upon you. All processes of reasoning must begin with some admitted fact. The admitted fact in this case is the murdered body of Mrs. Hill. I call this an “admitted fact,” for the learned counsel for the defense have not disputed, and have expressly admitted, that the lady was murdered. But, as already remarked, that we may take nothing for granted in an inquiry of such importance, it is necessary to look at all the surroundings to see whether they repel every presumption of suicide, for it is well for us to accept no concession, and to prove all things.

The dead body was found in the yard. You will probably conclude that Mrs. Hill was in the dining-room above, and that her blood was first shed near the head of the sofa. From this circumstance and from the number of wounds—thirteen being found upon her head and five on her hands—from their appearance, and especially from the depth of the wound in the temple, it would seem to be quite impossible that she could have committed suicide.

If, then, you conclude that this was not a case of self-murder, you will come at once to the main inquiry of the case. Who inflicted the injuries whereof Mrs. Hill died? The Com-

monwealth contends that the murder must have been committed by a person or persons living in the house. The defense insists that the crime was perpetrated by a burglar. Let us marshal the facts under these separate heads:

The alley gates were found fastened; the shutters closed; the fence uninjured and unmarked. There were, according to Officer Warnock, no stains or spots on the fence and the side door leading out on the verandah, while the gates and shutters were all secured. There was no unusual disturbance of the furniture. A lighted candle was found on the kitchen table. The gas was burning dimly in the dining-room. The Commonwealth contends that none of these facts point towards a burglarious entrance of the premises, and she relies further in this behalf on the presence of the four dogs in the house, the early hour of the night, the passing by of citizens, the presence of E. J. Post at the opposite corner from half past 8 to a quarter of 9, and other matters. The only circumstances favoring the assertion of a burglary are the fact that the back door of the kitchen and the blind door beyond were found open, and the statement of the defendant's witness, Charles Altgelt, that he saw two men leave the premises by the front door. If it is suggested that burglars entered by the rear, then you are to consider the probability of a man or men climbing the fence and entering the house at an early hour, while lights were burning; going up stairs, committing a terrible murder, carrying the body to the rear window, raising the sash, pitching the body into the yard, and going down stairs to the front door without attracting the attention of the dogs, the inmates of the house, or any neighbor.

As already intimated to you, the defendant relies in this behalf upon the testimony of Charles Altgelt. He swears that on the night in question he was at the church at Eleventh and Lombard streets; that he left about 9 o'clock; that the clock struck when he turned into Eleventh street, coming from the church; that it might have been two, three or four minutes when he passed this house, and that he saw two men leave Mrs. Hill's house by the front door. The Commonwealth

has, on the other hand, proved by Mr. Post that he was at the southeast corner of Tenth and Pine streets from half past 8 to quarter before 9. With the house in full view, he noticed no one enter or leave, and heard no noise. Mr. Wayne says he left Kemble street, above Twelfth street, at 9; that he walked down Kemble to Twelfth, down Twelfth to Pine, down Pine street on the south side, reaching the corner of Eleventh and Pine at five minutes past 9. He did not meet the two men Altgelt describes, or any man on Pine street, between Tenth and Eleventh streets. He heard no noise. Milo Lord was at the northeast corner of Tenth and Clinton streets, near the church, at five minutes past 9. He saw no people coming along Tenth street from Pine, as described by Altgelt, noisy, laughing and talking, and he saw no one cross over Tenth street, as stated by Altgelt.

Again, Sarah Campbell says that when she reached the front door, she rang the bell a number of times, and, after waiting some time, the defendant let her in. She says, "When he let me in, he unlocked the front door."

If this statement is correct, it may weigh in your judgment against the evidence of Altgelt, for, if the door were locked, two burglars could not have gone out of that door a short time before, locked it behind them, and left the key inside.

The defense, anticipating this objection to Altgelt's evidence, have examined Messrs. Wilbur, Thorp, Clift, Holt, and Cassidy, to prove that the door could be unlocked without making any noise which would be heard by a person on the outside. They tell us that they actually tried this experiment, and, although the persons on the step and pavement listened, and although the lock was not gently handled, still the noise was not heard.

On the other hand, Detective Warnock and Messrs. Stevens and Atkinson state that the noise can be heard.

You must weigh these conflicts of the testimony. When certain witnesses swear that they cannot hear the turning of a key in a lock, this does not prove that it cannot be heard by others. But, as very much in this case may depend upon

this apparently trifling circumstance, you will carefully consider all that has been said upon this subject. If you find that the noise of unlocking the door could not have been heard by Sarah Campbell, then you will, of course, reject that portion of her testimony. If, on the other hand, you believe her statement that the defendant unlocked the door, you will have the right to place the fact that the door was locked, into the scale against Altgelt's testimony.

Do you believe Altgelt, and that on the night in question he saw two men leave Mrs. Hill's front door? If you do, the defendant's theory of a burglary would be strengthened or established. If you do not believe him, do you find from the circumstance of the back doors being open, or from any other fact you can recall, that the premises were unlawfully entered?

On this question, which is a most important inquiry, you must weigh all the just inferences bearing upon this point, as derived not only from the witnesses and circumstances I have adverted to, but also from the position of the body of Mrs. Hill when found. It is not disputed that she was discovered in the yard, and it would seem to be clear that she must have been pushed or thrown out of the back window.

The Commonwealth has asked you whether it is reasonable to suppose that a burglar would waste the moments, precious for the purpose of escape, by carrying the body into the back room, raising the window, and throwing it into the yard? It is argued that this would not only needlessly prolong his stay upon the scene of his crime, but would, by the noise necessarily created, attract the attention of some inmate of the house. It is also contended that the disposition of the body not only disproves the assertion of a burglary, but that it points to the conclusion that the murder must have been committed by some person residing in the house, and anxious to conceal the crime or to give it the appearance of suicide.

It is for the jury, then, to take a careful review of the whole case at this point.

In support of the allegations of burglary, consider the open

back doors, the evidence of Altgelt, and any other facts you can recall. As against it, you will remember the condition of the doors, shutters, and gates; the absence of marks, footprints, or disturbance; the presence of dogs, persons, and lights in the house, and of neighbors and others outside.

Incidental to this point is the consideration of the question as to what instrument was used in the perpetration of the crime. The Commonwealth alleges that the murder was committed with the poker, which has been exhibited to you. Sarah Campbell says that it looks like the kitchen poker used in that house, and that it was usually kept hanging by the range. Officer Howard says that Mr. W. H. Morrell picked it up in the yard. Mr. W. H. Morrell corroborates this, and says he picked it up lying in the blood or just alongside of it; that the blood was one or one and a half feet from the screen, and the poker might have been three inches further. A portion of it laid in the blood. Mr. Daniel Doster says that Officer Howard brought it in, and some one said, "This is the thing that did the deed." This remark, as I understand the evidence, was made in the presence of the defendant. It is for you to say how this is, and whether the prisoner made any reply. Dr. Shapleigh tells us that this poker might have caused all the wounds he saw, except the fractures. He also tells us that a human gray hair was attached to it, and that the hair of the deceased was gray. Dr. Levis confirms this statement as to the presence of the hair, and adds that he also found on the poker fragments of wool and cotton, and stains of blood. From all this evidence the Commonwealth argues that the poker was the instrument used.

On the other side, Drs. Gross, Murray, Mitchell, Thomas and Paine have been called to support the allegation of the defendant, that the weapon was not the weapon employed. Some of them are of opinion that the wounds could not have been inflicted with such an instrument, and others think that if the poker had been used for such a purpose, it would have been bent or battered.

You will remember that it is not contended by the Com-

monwealth that the poker caused the heavy fractures described to you. It is conceded that they were produced by the fall from the second-story window to the yard. You may inquire on this point, if the poker was not the weapon, how came it that the gray hair and the fragments of wool and cotton became attached to the iron? Would they adhere simply because the head of the deceased and her cap were near the poker, or on the poker, in the yard? And, if so, would a person inflicting the wounds with some other instrument, take the poker from the kitchen and put it near or under the corpse? You are to try this case by your common-sense views of the testimony.

The coincidence by the reliable and scientific experts produced by the defendant is entitled to great consideration and respect, but the mere opinions of a college of professors should not outweigh a substantial fact, reliably established and carefully found.

We have thus far considered three of the links of the Commonwealth's case: First. That this was a murder and not a suicide. Second. That it was not committed by any person unlawfully entering the premises. Third. That the poker was the weapon employed in the perpetration of the offense.

Let us proceed to take up the other allegations of the Commonwealth. Having exhibited their theory upon the points already noticed, they now ask you to find that the defendant was the guilty agent in the commission of this offense.

I need hardly remind you here of the importance of this inquiry. All the other matters are of great moment, but this outweighs them all. You must, therefore, keep steadily in view all the presumptions in his favor, and all the rules governing a case of circumstantial evidence, to which I have already called your attention.

It is contended that the bloodstains established the defendant's guilt. They may be divided into two classes: The spots upon the defendant's clothes, and the other marks of blood.

Referring to the last first in order, the witnesses say that in the sitting-room there was a large pool on the floor, and an

arc of blood spots on the walls, terminating on the floor, which Dr. Shapleigh says must have been a little open. They also describe tracks of blood by drippings, from the sofa through the folding-doors to the window, a smear of blood upon the lower part of the sash, and on the outside of the building; blood had also flown or fallen on a piece of carpet, which ran along near the sofa, and a chair near the sofa was spotted with blood. Traces of blood were also found on the door knobs. Some or all of these are described to you by Dr. Shapleigh, John P. Montgomery, Esq., and Messrs. Doster, Leidy, Howard, Morrell, and Warnock.

Detective Warnock also describes a spot on the inside knob, which, according to his statement, appeared to be a drop of blood, the "center of which had been cleaned out, but the outlines were perfect." This apparent cleaning of the spot may have been caused by the hands of visitors to the house on the night of the murder. The same witness describes specks of blood on the marble-top table, and on the glass of the gas-burner. He says that a drop of blood was also found in the back entry, and another drop on the upper part of a blanket on the bed in defendant's room. Dr. Levis informs you that the spots on the blanket, oilcloth, and door knobs were blood. No trace of blood was found near the hydrant or in defendant's basin. A stained towel and piece of linen were found in the slats of the screen in the yard. This is in substance a description of the bloodstains on and in the house.

Certain articles of clothing have been produced, and have been given in evidence. Detective Warnock says that he took the coat, vest, pantaloons, shirt, and boots from the defendant, and that he found the cuffs, collar, and sleeve-buttons in the defendant's bedroom. The Commonwealth is bound to satisfy you that these articles belong to the defendant, and were all taken from him or from his room shortly after the occurrence, and that the stains examined by Dr. Levis were then on them. If you have no doubt as to these matters, you must then inquire what these stains are. If, beyond all ques-

tion, these articles belonged to the defendant, and bore the stains of blood when he was arrested that night, you must then consider what deduction is properly to be drawn therefrom. You are to remember here that if they are consistent with innocence, they amount to nothing. To weigh against the defendant they must point to guilt, and to it alone. Let us, then, address ourselves to this important question—to what result do these stains conclusively lead our minds? They, like the body, cannot speak to us. They belong to the class called “mute witnesses,” but they have a voice. Examine them and say what is their testimony. Guard yourselves carefully against the conclusions to which the mind is sometimes incautiously led by such appearances, and see here, as elsewhere, that you decide this question solely in the light of your calm judgments, and the principles of the law. In answer to questions put to defendant by Officer Howard, the defendant said that “the blood came on his white shirt by carrying the old lady in from the yard.” At another time, when Lieutenant Connelly questioned him as to the blood on his shirt, the defendant made no reply. Detective Warnock says: “I asked him how he got all that blood on the coat and vest. He said, ‘By carrying Mrs. Hill in out of the yard.’” He continues: “I asked the defendant how the blood came on his shirt. He said he didn’t know.” His explanation, therefore, of the presence of these stains is, that he received them in handling the dead body. He has called the physicians I have already named in support of this position. They account for the presence of such stains by the carrying of the corpse and the washing of the head.

But the Commonwealth’s counsel contend that this defense cannot avail, because, as they allege, the defendant’s white muslin shirt and the collar and cuffs were not on his person when he carried the body of Mrs. Hill from the yard to the kitchen settee, and that these articles were then up stairs in his bedroom, and remained there until after his arrest.

This requires us to examine the evidence to ascertain what clothes he wore at the particular time he lifted up the body,

and while he was bathing its head. Sarah Campbell says he had on a short, dark coat and pants. J. P. Montgomery, Esq., states that he had not a good opportunity of observing; that the defendant had on a dark colored coat with large collar, buttoned up. It is Mr. Montgomery's impression that the defendant had no collar on, and no white shirt was noticed by this witness. Mr. Doster, Mr. Leidy, and Officer Howard speak of the coat; two of them say it was buttoned up; all of them speak of the undershirt, and of the absence of the white muslin shirt and collar. Mr. W. H. G. Morrell and Mr. Lord make the same statements. Mr. Doster says the undershirt looked white. Mr. Morrell calls it gray mixed.

In confirmation of this, Officer Howard says that when he told the defendant "to put his cap on, as he was going to take him to the station-house," the defendant said "he wanted to change his clothes, and to go up stairs." The officer adds that when they went up stairs, the defendant put on the white shirt, a black cloth vest, and the same coat he had worn down stairs. If you believe this evidence you will probably conclude that the defendant had not on the white muslin shirt, collar, or cuffs, while he was bathing the head of the body down stairs. If so, and the shirt, collar and cuffs had been left up stairs when he came down at Sarah Campbell's call, then it is very clear that all suppositions as to the sprinkling of those articles in the act of carrying in or bathing the body is out of the case. You will also remember upon this branch of the case, the evidence as to the cap worn by deceased, and the position of the spots on the defendant's garments.

There was, it seems, a woolen cap on Mrs. Hill's head. Detective Warnock says he did not see her hair loose on the settee; it appeared to be confined. The coat which was seen buttoned has, according to Dr. Levis, sprinkles of blood inside. It is also described as having blood on the sleeve up to the shoulder, soaked and smeared places on the collar, side, and cuff. The stains on the vest, pantaloons, boots, and other articles have also been described to you. It is said that the shirt bosom is sprinkled obliquely, from right to left, upward

and outward; that the collar has a few minute sprinklings and that the cuffs have minute sprinkled spots.

On behalf of the defendant, it has been urged that small particles of blood could have been sprinkled on to the shirt from his hands and from the lapel of the coat. On this point, and the absence of any brain on the poker, Dr. Paine has been examined. Drs. Pancoast, Allen and Morton have been called by the Commonwealth, to rebut the evidence of the defendant's experts, as to the time required for the coagulation of blood in different circumstances.

Now, gentlemen, you must consider all these various arguments and the evidence relied on in support of these respective theories. Weigh them carefully. Has the Commonwealth satisfied you that the stains on the shirt were received in the very act of murder? Has the defendant, by argument, evidence, or suggestion, created a reasonable doubt upon this point?

The Commonwealth has also relied upon the evidence of Messrs. Doster, Howard, Morrell and Montgomery, as to the defendant's actions. His continuance of the bathing after he was told that Mrs. Hill was dead; his omissions to go into the yard or up stairs with those who were searching the premises; his failure to ask any questions as to the discoveries made by them, and his manner throughout have all been commented upon.

The defendant's counsel have, in like manner, relied upon certain expressions of distress and anguish, his requests for medical assistance, and other matters, as explaining all that has been alleged against him, and as actually establishing innocence.

Mr. Morrell says the defendant exclaimed, "Oh! my God; my poor mother!" Mr. Bowen testifies to a similar expression, and Officer Howard says he declared he was innocent.

On the question of motive, you will remember that it is alleged that the defendant's due bill for \$50 was found in the wardrobe of the deceased; that his habits were extravagant, and his means limited. It is also said that there had been ill

feeling between the deceased and the defendant, because of the introduction of the name of Mrs. Twitchell in the deed for the house. It is charged that this was done in fraud of Mrs. Hill. It is also said that she complained that the defendant had robbed her, and that this was communicated to the defendant. It is further stated that he spoke of her insultingly. The principal witness on this branch of the case is Mr. Joseph Gilbert. Mr. Henderson speaks of his visit to Mrs. Hill, and that the defendant ordered him to leave the house. The tax receipt has also been produced. It is said that it bears the defendant's indorsement to the effect that it was paid by him for Mary E. Hill.

In answer to this it is contended that the defendant had possession of considerable property. Mr. Long saw shingles at the defendant's place of business the Tuesday before the murder, and that the bundles were marked with the defendant's name. Mr. Daniels saw, at the same place, ten thousand shingles on the Thursday before the murder. They would average, he says, \$30 a thousand. Mr. Hollingshead counted at the same place fifty-nine thousand three hundred and twenty-five first quality shingles, and six thousand common shingles. He further says that there was machinery there worth about \$5,000. He told you, however, something about the ownership of the shingles, and he said the defendant owes him \$130. Mr. McCully also spoke of the defendant's property at the stables as worth \$1,200, and netting \$960.

The defendant has further attacked the character of Mr. Gilbert for truth and veracity. A number of witnesses have been examined both for and against Mr. Gilbert, and you must consider all that has been said on this point in determining the proper weight to be attached to his testimony. If you find that a witness is unworthy of belief, you should not convict upon his testimony; but before you disbelieve a man you must weigh the evidence for him as well as against him.

In order to show that Mrs. Hill was not injured by the insertion of Mrs. Twitchell's name in the deed, the defendant

has examined a number of witnesses to prove that Mrs. Hill spoke of the house and furniture as belonging to Mrs. Twitchell. Ellen Dolan, Thomas E. Carter, Mrs. Eisenhouer, and Sarah Bouvier have testified on this point. A number of bills have also been submitted to you. The Commonwealth contends that when the witnesses say that Mrs. Hill declared the house and furniture were Mrs. Twitchell's, they mean that Mrs. Hill said she would leave or would give all to her. Some of the witnesses used these expressions on cross-examination. Mrs. Twitchell's name is in the furniture bills. Mrs. Hill's name was on the house.

I have several times mentioned to you that dogs were kept in the house. The Commonwealth alleges that these animals were very watchful, and that the two belonging to Mrs. Hill were not seen by any of the witnesses on the night of the murder. The defendant contends that the dogs were kept in the bedrooms, at times did not bark at strangers, and that they made no noise on the night in question until Mr. Long actually entered the bedroom where two of them then were.

The defense also rely upon the absence of traces of blood in defendant's basin and near the hydrant. I have already stated to you that Mr. Warnock testifies to these matters, and that he saw a man's stockings on the floor at the head of the bed. He also speaks of the omission to examine the top of the fence to see if the dust had been removed.

The defendant further relies upon the fact that Mrs. Hill had an income of \$6,000 per year, which, upon her death, went to the heirs of Mr. Hill. It is also in proof for the defense that the noises made in the dining-room could not be heard in the bedroom with its doors closed. Messrs. Dobbins and Essler have been examined on this point, and they say that Mr. Bender was present when the experiments were made. You also heard from Ellen Dolan and Sarah Bouvier as to Mrs. Hill's habit of sitting up late, and that defendant and his wife retired early. In addition to this, Sarah Bouvier speaks of Mrs. Hill having money in her bosom, and of her being on good terms with the defendant. Both of these allegations are denied by the Commonwealth.

The defendant has also shown that the gas bills were very small; that the cess-pool was searched at the instance of the Commonwealth's officers, and that no weapon or money were found therein. It is further in proof that on the night of the murder the thermometer ranged from 36 to 42°.

Finally, the defendant has produced a number of witnesses to establish his good character for peace and integrity. They speak highly of him, and you must consider this along with the other evidence in the cause.

Good character is not only decisive in favor of a defendant, where a doubt exists, but it may be of such worth as to raise of itself the doubt which entitles the accused to an acquittal. Its precise weight in each case is a question, like all other facts, exclusively for the jury.

You have heard from me that you are to give to the defendant, at each stage of your inquiries, and at the conclusion of your deliberations, the benefit of every reasonable doubt.

This does not mean that you are to speculate as to whether a matter established to your satisfaction may not be otherwise. It means that you are to take nothing for granted upon mere assertion, and it means, further than this, that where you honestly hesitate upon the question whether certain evidence establishes a given proposition, when your minds after mature deliberation and earnest effort to arrive at the truth cannot come to a satisfactory conclusion as to the existence of a certain fact, or as to its effect, then the doubt belongs to the defendant. The difficulty must be suggested by the case and not by your imagination. If the beam wavers, then the doubt is thrown into the defendant's scale, but you must not so hold the balance as to create tremor.

You may possibly wish to fix the precise time of the murder. I have analyzed the testimony on this point: Sarah Campbell says she left Mrs. Hill's house about 3 p. m. In the evening she was at the house of a friend, in Lombard street, between Seventeenth and Eighteenth streets. It struck 9 o'clock a few minutes before she left. She probably reached Tenth and Pine about 25 minutes past 9. Frederick

H. Weaver, the watchman, was going to his bank, and at 20 minutes of 10 o'clock he saw a woman pull the next-door bell. The murder had then been discovered. John P. Montgomery, Esq., took tea at 6:30; remained in the dining-room, adjoining the scene of the murder to the north, until five minutes past 9. He then went to his bedroom; commenced to read, and had read about half an hour when he heard a knock at his door. Mr. Doster and Mr. Channing Leidy were coming down Tenth street about half past 9 o'clock; understanding that something had occurred, they went into the house. Mr. Leidy says the body was then cold. W. H. G. Morrell says that the clock struck 9 when he was in Tenth street, below Chestnut street, and that he went into Mrs. Hill's house about ten or fifteen minutes of 10. Dr. Zantzingar arrived there at twenty minutes of 10. Mrs. Hill was then dead, and had been dead, he supposed, twenty minutes or half an hour. Dr. Merritt reached the house about twelve minutes before 10. Dr. Maury, the defendant's witness, did not see the body, but supposed, from the description, that it had been dead an hour or an hour and a half, when Dr. Zantzingar made his examination. As Mr. Montgomery was sitting within a few feet of the sofa on which Mrs. Hill was probably murdered, with only a brick wall between him and her house, through which sounds were readily heard, and as he remained in that room from 6:30 o'clock to five minutes past 9, without hearing the slightest noise, it is, perhaps, probable that the murder was committed shortly after Mr. Montgomery went to his bedroom, say between five and ten minutes past 9. This would correspond with Dr. Zantzingar's statement. If so, two or three of the witnesses examined must have been very near the house at that very instant, and the servant girl was then on her way home.

I have thus endeavored, gentlemen, to touch upon every point in the case, and to present all the evidence under appropriate heads. You must supply any omission you detect, and look searchingly through the whole case.

Accept no circumstances of whose existence you are not

well satisfied. Draw from it no conclusion save that justified by truth and by reason. See to it that each link is perfectly forged and logically welded to its brothers in the chain. Allow no element of the case to weigh against the defendant unless it point to guilt alone. Guard yourselves against every possible prejudice. Give the defendant the benefit of every rational doubt, and so discharging your whole obligation to the law, to the defendant, and to yourselves, you shall find that duties thus paid bring repose to the minds that study to perform them.

THE VERDICT OF GUILTY.

The jury went out at twenty minutes of 9 o'clock and returned into court at thirteen minutes past 9.

Mr. Galton (Clerk). Gentlemen of the jury, rise and look upon the prisoner. Prisoner, rise and look upon the jury.

Mr. Galton. Gentlemen of the jury, how say you: Is the prisoner at the bar guilty of the felony of murder whereof he stands indicted, or not guilty?

The Foreman. Guilty.

Mr. Galton. Of what degree?

The Foreman. Of the first degree.

Mr. Galton. Gentlemen of the jury, hearken to your verdict, as the Court have it recorded. You say you find the prisoner at the bar guilty in manner and form as he stands indicted, and so say you all.

The *Prisoner* stood unmoved until the verdict was pronounced, when he clasped his hands on his heart, and raised his eyes as a person would do in supplication.

He maintained his nerve, although he seemed bewildered for a moment at the verdict, he having evidently expected an acquittal. His father leaned his head upon the rail of the dock and wept bitterly.

THE SENTENCE OF DEATH.

January 30.

At 10 o'clock the prisoner was brought into court. He presented a better appearance than on any occasion since the

commencement of the trial. His hair had been neatly cut; this, together with a clean shave, made him look younger in years than he really is. During the morning he sat in the dock usually occupied by females. His father was early by his side and provided him with a chair in the dock, where he sat cross-legged with his hands clasped, talking to his parent.

As the clock struck 12, the Judges appeared on the bench.

JUDGE BREWSTER. Twenty-five reasons have been submitted in support of this motion for a new trial. They have been argued at great length, and have received careful consideration.

The first, second and third reasons refer to certain remarks alleged to have been made by the District Attorney in his closing address to the jury. We have not been referred to any case in which a new trial has been granted for similar reasons. No objections to the remarks were made at the time, and no complaint can be made now.

Reasons third and fourth to twelfth, inclusive, complain of the charge. Upon the conclusion of the body of the charge the Court stated that certain points had been presented by the counsel for the defense, which would be read and answered.

One of the counsel for the defense thereupon rose and stated that all the points thus presented were withdrawn, and that the counsel simply desired to invite a correction as to the statement of the evidence upon two points.

After this disavowal of all exception it will not be deemed arbitrary to hold the defense to its direct withdrawal. No counsel has the right to mislead a judge by a direct statement of acquiescence or by silence. Anxious to correct any possible error in this record which can be discovered, we have examined the charge with careful scrutiny, and all agree that there was no injustice therein to the defendant.

Defendant's counsel repeatedly stated in his remarks that Mrs. Hill had been brutally murdered. There was not then, there is not now any question as to degrees of murder.

There was no evidence, no pretence of hot blood, or conflict, of self-defense, of intoxication, of any thing which could define this crime as other than murder in the first degree.

As evidence of premeditation, we have the poker carried up in the dining-room, the mortal blow on the recumbent body, and the finger almost severed, which was shading the face of the unfortunate lady.

In support of the defense that the deed had been committed by burglars, the testimony of Mr. Altgelt was referred to at some length, and the jury were also told that they could adopt the theory of burglary, even though they did not credit Altgelt.

The names of all the defendant's witnesses were stated and the substance of their testimony recapitulated. The gift of the house and furniture to Mrs. Twitchell, the temper of the dogs, the large income of Mrs. Hill, want of motive, impossibility of hearing in the front room noises in the dining-room, the friendship between the

deceased and the defendant, the failure to find any money or weapon in the cesspool, were all stated.

The jury were also reminded that the prisoner had proved a good character, and, in conclusion, they were reminded of their duty to give the prisoner the benefit of every doubt. We now pass to the consideration of the remaining reasons.

The fourteenth reason is the refusal of the Court to permit the defendant to withdraw his peremptory challenge against one of the venires. But it has been decided that the privilege of challenge is the right not to select but to reject.

The fifteenth reason is because the Court admitted statements of witnesses which were not evidence, and subsequently sought to cover the irregularity by instructing the jury to disregard them; and the evidence of Joseph Gilbert is referred to in this connection.

The Court admitted nothing. The witnesses were allowed to proceed without objection by defendant's counsel, and as soon as motions to strike out were made, the sentences objected to were stricken out. Here, as elsewhere, the prisoner had the benefit of every doubt.

The sixteenth reason was because the Court admitted, as evidence of the defendant being pressed for money, the statement of Mrs. Hill to Gilbert that the defendant and wife had robbed her. But the first evidence on the point of robbery came from the defendant himself.

The seventeenth reason complains that the defendant's bank account was admitted, with the assurance that it would be followed by evidence that the prisoner was in a tight place, which the Commonwealth failed to prove. But the Commonwealth did show that the prisoner was unable to pay his debts.

The nineteenth reason is, that the Court rejected evidence of defendant's own statements, which is of little weight here, as the prisoner was allowed the benefit of every doubt, and was defended in the ablest manner by his counsel.

The twentieth and twenty-first reasons are, that the Court rejected the opinions of the medical experts based on experiments recently made. If a jury can be bewildered by such confusions of science, we might as well abolish jury trials.

But the prisoner wished to show that some other arm than the defendant's could, with some other poker than that in evidence, inflict such wounds upon some other skull. Of what avail was all this? The experiment must have been made on the skull of a corpse. These blows were on the head of a living person.

The twenty-second reason complains of the admission of the evidence of E. J. Post. The Commonwealth offered to show that at the time Altgelt passed there nothing unusual occurred on the premises. All the testimony disproves the theory of burglary.

The twenty-third reason assigns after-discovered evidence. We have heard nothing in support of it.

Lastly, it is said the verdict is against the law and the evidence. We have carefully reviewed the testimony and are of the opinion that we cannot disturb the verdict. All the circumstances point to the defendant's guilt. The explanations of the defendant were all pa-

tiently heard by the jury, but they have not regarded the statements made as satisfactory. The motion for a new trial is, therefore, overruled.

Mr. Sheppard. May it please the Court, as the motion for a new trial has been overruled, it now becomes my official duty in behalf of the Commonwealth in common with the laws of Pennsylvania, to now ask that judgment of the law be passed.

JUDGE ALLISON. The Clerk will ask the prisoner if he has anything to say why sentence should not be passed.

The Clerk. George S. Twitchell, Jr., have you anything to say why sentence of death should not be passed?

The Prisoner. I desire to say that I have been tried and convicted of a crime I know nothing of.'

JUDGE BREWSTER. George S. Twitchell, Jr., the accusation preferred against you by the Commonwealth has been examined with great patience and with an earnest desire to accord to you the fullest rights secured by the Constitution and the laws. The jurors who tried you were accepted by you when your challenges were still unexhausted. They deserved your confidence, for no men could have heard your case with greater fairness or impartiality. You were ably and skillfully defended. All that learning, industry and eloquence could suggest was most earnestly urged on your behalf. The Court was anxious to throw every doubt into the scale of mercy.

Notwithstanding all this, you have been convicted of the highest crime known to the law, and a most exhaustive argument in your behalf has failed to satisfy any member of the Court that the verdict should be disturbed. This trial has thus demonstrated that secret murder, committed in the privacy of a home, can neither be shielded by the absence of witnesses or the position of the accused. Although the victim may be dispatched in quiet, still every little drop of blood and every surrounding fact become, in the orderings of Providence, a witness pointing with unerring certainty to the criminal.

I shall not add to the pain of your present position, by alluding to the circumstances of this case, but it would seem to be due to justice to declare that your trial has been conducted throughout with all the tender regard for life which marks the humanity of the law. While Mrs. Hill was sent to her last account without the opportunity for even one short prayer, the Law has been jealous of every right which the presumption of innocence could throw around you. She has given you every opportunity to prepare for your trial, the right of challenge to jurors, the privilege of being defended by able counsel, the benefit of every doubt, and the advantage of reviewing all the rulings upon every point.

When all have resulted in your condemnation, she still, in mercy, gives you time for repentance and for supplication. Let me recommend you in all earnestness to avail yourself of this privilege. Obtain the counsel of devout men, approach with them the Throne of Grace. In fervent contrition, and in sincere repentance, seek Him whose mercy is all-sufficient even to the washing away of blood. And now it only remains for us to declare the judgment of the law, which is:

That George S. Twitchell, Jr., the prisoner at the bar, be taken from hence to the jail of the County of Philadelphia, from whence he came, and from thence to the place of execution, and that he be there hanged by the neck until he is dead, and may God, of His infinite goodness, have mercy upon his soul.

THE FRUITLESS APPEALS.

March 23.

The prisoner's counsel had previously applied to the Supreme Court for a writ of error which after argument was refused. Today another appeal was made by handing a petition to the Court. This was disposed of very peremptorily by Chief Justice Thompson, who said:

"On Monday, the 22nd inst., and over fifty days after sentence, a similar application was handed to the Court, not by either of the counsel engaged for the prisoner on the trial, and upon what authority we do not know, as the name of the prisoner is not to the petition or attached to any of the affidavits or papers presented, but

that of the counsel making application only.¹⁵ This application, even if fully authorized by the defendant, which does not appear, is out of time; but as the reasons assigned are altogether different from those heretofore assigned, we have considered them to see if a different conclusion should have been arrived at on the former application, and if so, to remedy the result, if possible; and on this examination we hesitate not to say that had they been presented on the petition of the prisoner and in due time, our conclusions in regard to the *allocatur* could not have been in the least changed. They contain no grounds whatever demanding a review of the case in this court. The application is refused, and the papers are directed to be returned to the counsel.

Mr. Hubbell. I desire, if your Honors please, to have these papers filed in this court. I appear, sir, authorized by the prisoner himself.

CHIEF JUSTICE THOMPSON. No, sir! This is the disposition we make of this case.

Mr. Hubbell. Then, may it please your Honors, I hold in my hands a paper prepared by myself and Mr. O'Byrne, which I desire to have filed in this court in this case.

CHIEF JUSTICE THOMPSON. We cannot admit it; we have finally disposed of the case.

TWITCHELL'S CONFESSION.

April 3.

Today Twitchell published from his cell the following confession:

"I went to my room on the night of the murder, and instead of going to bed I laid down on the lounge in my room, and fell asleep. My wife was in bed at the time. I was roused by her repeated calls, and ran down to the dining-room, where I found her much excited, saying, 'I have had a quarrel with mother and killed her;' I do not know whether she said 'save me!' or 'help me hide it!' but at last we threw the body of Mrs. Hill out of the window to make it look as if she fell out; I went down stairs and washed my hands and face at the hydrant; then went to my room, undressed, and went to bed; my wife came up afterwards and got into bed, where we staid till Sarah Campbell rung the bell. I think we were in bed ten or twenty minutes. I made a solemn vow to the Eternal God that night that I would never reveal it; but I cannot keep it any longer. I am sorry that I have said I knew nothing of it; but I did it with the vow in my mind, and to save my wife. I now make these disclosures that I may have peace with God. In the presence of Rev. George Bringhurst and William B. Perkins." Questioned in his cell by his counsel and clergyman, he added: "I did not entertain the slightest idea that my statement would alter my situation, as far as the law went, but made it to have entire peace with my God, and did not think it

¹⁵ Mr. Hubbell.

would be published until after my execution. My reasons for not stating it sooner are simply these, that I fully expected my wife to come forward and state all, and not leave me to perform the unpleasant duty; but her absenting herself from me, and her actions so unnatural to me, and in such a position, has compelled me to come forward and state all I know, which I did on Saturday. I would state, also, gentlemen, that if these statements can be said by my wife to want foundation and are incorrect, let her come forward and deny them."

But the general opinion in Philadelphia was that Twitchell was lying. "The general belief is, that the reverse of the story is most likely to be true, that is, that Twitchell himself may have had some dispute with Mrs. Hill while sitting in the room with her; that he killed her, then told his wife, and that the two then threw the body out of the window. But, however that may be, no one gives any credit to his 'confession,' not because there is any belief that Mrs. Twitchell is guiltless, for there is no such general belief, but because Twitchell's story is intrinsically improbable, and because he has shown himself to be utterly unworthy of credit. The blood sprinkles on his shirt bosom and the sprinkles on other parts of his clothing, cannot be accounted for by the mere fact of carrying the body of Mrs. Hill to the window. The contact with the blood from carrying the body might have smeared his clothes, but could not have sprinkled him with the fine spots on the upper part of his person—the 'red rain,' directed by the laws of Providence—which pointed him out beyond all doubt as the brandisher and user of the murderous weapon, or, as standing by whilst the weapon was being used. This furnishes the intrinsic evidence of the falsity of that part of the story where he says he was asleep on the lounge in his room whilst his wife was killing her mother. She, indeed, may have done the deed; but, if so, he was standing by within the fatal circle of that bloody shower, and not in his own room, either asleep or awake. But Twitchell has shown himself, all through this horrible affair, to be an artful hypocrite and shameless liar, as well as a cruel and cowardly murderer, whose words, statements and 'confessions,' so far as they are calculated to shield himself, are entitled to no credence whatever. While in the dock, accused of the murder of his mother-in-law, a woman who had bestowed every kindness and indulgence upon him, he sat like an unconcerned spectator, without a sign of the shame and humiliation that should have covered him all over, and the explanation of this was that he was conscious of his innocence, that he knew nothing about the murder. When asked if he had anything to say why the sentence of the law should not be pronounced, he answered, with the basest hypocrisy and falsehood, that he had been convicted of a murder that he 'he did not know anything about.' In his cell since the sentence, he has attempted to play the part of the martyred innocent, saying that those who believed him guilty 'would live to be sorry for it,' and still pretending utter absence of all knowledge of the murder until he saw the dead body; and while thus lying, he was pretending all the while to be devoutly engaged in prayer and other religious exercises. Now, in a pitiable effort to relieve

himself from the charge of killing Mrs. Hill with his own hand, in the hope that it may save his wretched life, he tells the public that all his previous statements were false, that he did know all about the murder, that his air of injured innocence was a sham, and his devout praying and singing were base hypocrisy. These are his claims for belief in his 'confession,' and these the reasons why no one can believe it.

"There is one point, however, settled by the 'confession,' viz.: that the murder was committed by one or other of the Twitchells—one or both; and not by any outside parties. Altgelt's 'tall man,' with the 'long coat,' is thus proved to be a myth, if not worse, as every thinking person believed at the time. That story has met its just fate. The pretentious pamphlet laid before the Governor, by ———, 'of counsel for defendant,' based on 'physical laws and scientific' ratiocination, and which contained the 'demonstrations of Twitchell's innocence,' and equal demonstrations that the murder was committed by Altgelt's 'tall man,' and that the other 'man' was stationed in the yard as a look-out, has met with a still more ignominious catastrophe. This credulous counsellor was so blind in his faith, that he went to Washington for sympathy in his theories, and it is a rather striking incident of this remarkable case, that about the very time that he was appealing to the Supreme Court in behalf of 'this young man conscious of his innocence,' the 'innocent young man' himself was engaged in preparing the 'confession' of his guilty knowledge for the public eye. These events should be a warning to all those affected by the prevalent maudlin sentimentality for murderers, and especially those who have made themselves conspicuous in this Twitchell case. Twitchell, by his last act, has shown himself to be equal to any depth of baseness, and yet he has been made the object of as much sympathy, and as great a degree of persistent effort to free him from the punishment due to his atrocious crime, as if he had been a martyr and a saint.

"There is still another, and a most important point suggested by this 'confession.' It is now placed beyond all doubt that the whole theory of the defense was based upon a falsehood. The public will remember the anonymous letter purporting to come from one of the murderers, which said that the writer and another man killed Mrs. Hill. This was the first public introduction of the 'two men' who subsequently figured in the defense. Then Altgelt's evidence was brought in to account for these two men. Twitchell's statement that his wife and himself were the only parties to the murder, brands this whole theory as a falsehood. Whose falsehood was it? Was it Twitchell's own? If not, his statement opens up a most serious question."¹⁶

THE SUICIDE OF THE PRISONER.

April 8.

The execution of Twitchell was fixed for today between ten and three. But on going to wake him early this morning, one of the

¹⁶ Report of the Trial, page 2.

jailers found him lying dead upon his bed. His spiritual adviser, Rev. Mr. Bringhurst, had left him at 11 o'clock the night before, and at two o'clock in the morning one of the prison watchmen had looked into the cell and found him apparently asleep with a blanket drawn over his head. At the inquest one of the warders stated that after going into Eaton's cell—another convict who was to be hanged with Twitchell—to see if he was safe, was called back by Eaton, saying: "Mr. Cassidy, I wish to say something to you. I do not know that it will be right for me to die without telling you, as perhaps the keepers might be blamed for what might occur." I think he said: "You will not hang Twitchell tomorrow." I said: "What reason have you for that supposition?" He replied: "I have had a talk with him this evening." I said: "How did you talk with him?" He said: "Our doors were open. I saw him and wished to encourage him; I told him to pick up courage and die like a man. He shook his head, and held up his thumb and finger, pointing to his mouth, and said: 'Mum is the word.'"

The coroner's jury found that Twitchell had committed suicide with prussic acid. But who had supplied it to him could not be discovered.

THE TRIAL OF JOHN WOOD FOR SENDING A CHALLENGE TO A DUEL, NEW YORK CITY, 1818.

THE NARRATIVE.

In the days when dueling was the last word of a gentleman's quarrel, John Wood, a very humble and illiterate youth in New York City, made up his mind to emulate his betters in this regard and after much labor, evolved an epistle to his enemy to this effect: "I have an excellent pair of pistols as ever was used—i Should be very happy with your company tomorrow afternoon or morning, which is most convenient for you, to go along with me and try them; everything will be Prepared and we will have a fine time off it." The enemy wrote back asking how he should proceed, to which he replied, "I think if you was more particular in Reading your letter you would find i mentioned it should be a little above hoboken as there is a Very Convenient Place." This meeting did not take place, but John was arrested, indicted, tried and convicted of sending a challenge to a duel. The Judge fined him only one dollar as he thought the other penalties prescribed by the State against duelling were enough. And he pointed out to John that for what he had done he could never hold any office in the State—not even be a sergeant in the militia. And he would be forever a proscribed citizen of the country which gave him birth.

THE TRIAL.¹

In the Court of General Sessions, New York City, September, 1818.

HON. CADWALLADER D. COLDEN,² *Mayor.*

September 10.

The defendant had been indicted for a misdemeanor, in writing and delivering, and causing to be delivered, to John

¹ New York City Hall Recorder. See 1 Am. St. Tr. 61.

² See 1 Am. St. Tr. 6.

C. Tallman, a challenge to fight a duel, against the form of the statute in such case made and provided.⁵ The parties were both young men under the age of twenty-one years.

Mr. Van Wyck,³ for the Prosecution.

Mr. Drake,⁴ for the Prisoner.

The challenge set forth in the indictment. consisted of two letters in the following words and figures:

“New York, July 22, 1818.

Mr. Jno. Talman

Sir,

I have an excellent pair of pistols as ever was used i Should be very happy with your company to morrow afternoon or morning which is most convenient to you for to go along with me and try them everything will be Prepared and we will have a fine time off it i have got an acquaintance of yours to go along with me i mean my friend Robt Ustick i wish you would give me an answer wether we shall be favoured with your company from

Yrs obd

John Wood.”

To this epistle Tallman returned the following answer :

“Sir

I recd yours dated the 22d desiring my company, at wnat piaece you do not mention; I would thank you to be more explicit & I shall know how to proceed

Yours &c.

J H T.”

³ See 4 Am. St. Tr. 547.

⁴ DRAKE, JOHN R. (1783-1857) One of the earliest settlers in Tioga County, New York. Member of Congress, New York, 1817-1819. Judge, Tioga County, 1833. Member New York Assembly, 1834. Died in Oswego, N. Y.

⁵ The “act to suppress duelling,” passed Nov. 5, 1816 (4 Vol. Laws N. Y. b. p. 3), provides, in substance, that if any person whatsoever shall challenge another to fight a duel, or if any person shall accept a challenge, or if any person shall, knowingly, be the bearer of a challenge, such person shall be deemed guilty of a public offense; and being convicted thereof, shall be incapable of holding or being elected to any post of profit, trust or emolument, civil or military, under this state. All officers, civil and military, except town officers, and every person who shall be admitted a counsellor, attorney, or solicitor, in any court, are required to take an oath or affirmation, that they have not been engaged in a duel since the 1st of July, 1816, and that they will not be concerned in any duel during the continuance

The reply, which closed this correspondence, was as follows:

“New York July 22 1818.

Sir

I think if you was more particular in Reading your letter you would find i mentioned it should be a little above hoboken as there is a Very Convenient Place Please to Let me know what time i may Expect you there.

Yrs John Wood”

Mr. Drake applied to the court to order a *nolle prosequi* to be entered on the indictment according to the statute,⁶ on the ground that the parties had settled between themselves, and Tallman was then ready in court to acknowledge satisfaction. The counsel contended that this misdemeanor fell within the provisions of the statute, which he read.

The COURT decided that, although this was a misdemeanor which could not be considered as having been committed “to the injury and damage of the party complaining,” although “not charged to have been done riotously, or with intent to commit a felony,” and, although, in strictness, “not an infamous crime,” yet it was an offense “for which there was no remedy by civil action.” For several misdemeanors besides an assault and battery, the party injured might bring an action; but for sending a challenge no remedy, by civil action, was provided. This is, therefore, a misdemeanor which does not fall within the provisions of the statute, and the court could not legally grant the application.

of the act, and while an inhabitant of this state; and it is further provided by the act, that if any person shall leave this state and fight a duel, or aid, etc., and any person shall be killed, the challenger may be tried in any county in this state.

⁶ “That where a person shall be indicted for an assault and battery, or other misdemeanor to the injury and damage of the party complaining, and not charged to have been done riotously, or with intent to commit a felony, or not being an infamous crime, and for which there shall be a remedy by civil action, if the party complaining shall appear before the court in which the indictment shall be, and acknowledge to have received satisfaction for such injury, etc., it shall be lawful for the court, in their discretion, to order a *nolle prosequi* to be entered,” etc.

THE WITNESSES.

Robert Ustick. Am the person named in the letter set forth; never knew of any difference between the parties, and was never spoken to by Wood to become a second.

John C. Tallman. There had been a difference between Wood

and myself; the letters, which I believe to be in the handwriting of Wood, from having seen him scribble on paper, were received by the hands of Wood's cousin. To the first letter I returned the answer, and, on the same day, received the reply.

Mr. Drake contended to the jury, that from the words of the letter, and the other evidence, it could not be considered that a challenge was intended; and, for aught that appears, this might have been an invitation from Wood to Tallman, to accompany him on an innocent excursion to fire at a mark.

The MAYOR charged the jury that, although the statute had provided that "if any person shall challenge another to fight a duel," etc., yet, to constitute a challenge, it was not necessary that the words contained in the act should be pursued. The sole question for the determination of the jury was, whether, from all the facts and circumstances in the case, it could be rationally inferred, that the letters set forth in this indictment were intended by the defendant as a challenge to fight a duel. The principal ingredients of a challenge were time, place, weapons, and friend; all of which were contained in the letters. Besides, there was a difference between the parties, and although it had not been proved that Hoboken was a place generally selected for fighting duels, yet, this was a matter of public notoriety. And his honor remarked, in the conclusion of his charge, that it would be a subject of deep regret, if an offense, against which the legislature had been so anxious to guard, an offense so dangerous in the community, disseminating itself even among children, as in this case, could be committed with impunity, because justice was so blind as to be unable to penetrate the flimsy veil of defense interposed.

The Jury found the defendant *Guilty*.

The MAYOR, in passing sentence, observed, that a consideration of the severity of the punishment, incident to a convic-

tion for this offense, by the provisions of the statute, had induced the court to superadd a nominal punishment only. The defendant must hereafter be contented to live in the country which gave him birth, as a proscribed citizen; for whatever may be his merit and qualifications in this state he could never hold any office; not even that of a subaltern in the militia. Should he procure a pardon from the executive, still, he never could take the oath prescribed in the statute, for those chosen or elected to fill an office.

It would have been far better for him, before undertaking to display his chivalrous spirit by writing challenges, so far to have completed his education, that he might have written the English language with more propriety than his composition evinced on this occasion.

He will be fined one dollar and give security to keep the peace for two years.

THE TRIAL OF STEPHEN AND JESSE BOORN FOR THE MURDER OF RUSSEL COLVIN, BENNINGTON, VERMONT, 1819.

THE NARRATIVE.

In the spring of 1812, there lived in the town of Manchester, Vermont, a family named Boorn, consisting of the father, Barney Boorn, his wife, two grown-up sons, Stephen and Jesse, a daughter, Sally, who had been married eighteen years to a man named Russel Colvin, and who, with her husband and two children, also lived with her father. The old people were respectable, and in comfortable circumstances, while the younger members of the family were rather wild and reckless.

The son-in-law, Colvin, was a man of weak intellect, and was at times insane, and would sometimes absent himself for days at a time without giving any account of himself, and once he was gone eight or nine months, though it is said that he corresponded with his family during the time.

In the month of May, 1812, during the absence of Mrs. Colvin, who was on a visit to a neighboring town, Colvin suddenly disappeared. No particular inquiry was made at the time, as the Boorns reported that he had gone on one of his customary journeys. Days and weeks rolled by, and months lengthened into years, and nothing was heard of the missing man. People began to make inquiries and, as is usual in such cases, rumors began to spread, and suspicions of foul play were communicated from one to another.

To add fuel to the flame, it was remembered that the young Boorns had spoken strangely of the disappearance of Colvin, though no one had taken much notice of it at the time. One of them had stated that he knew Colvin was dead, and the other, that they had put him where potatoes would not freeze, Though these were, probably, idle remarks when made, they served, greatly, to make the people believe that the Boorns

were responsible for the disappearance of Colvin. It was also known that Colvin and the Boorns had not been on good terms, and that they sometimes quarreled. In a short time the public came to the conclusion that Colvin had been murdered, and that the Boorns were the murderers, and a hundred eyes and ears were on the alert to discover evidence of what they already believed to be true.

And evidence was not long in forthcoming. Some children at play, on or near the old Boorn place, found a hat in a mouldy, dilapidated condition, and it being recognized as the hat Colvin wore at the time of his disappearance, search at once began for the bones of the unfortunate man. About this time, Amos Boorn, uncle of Stephen and Jesse, dreamed that Russel Colvin came to his bedside and told him that he had been murdered, and to follow him and he would lead him to the spot where he was buried. This was repeated three times. The place of burial as described in the dream was an old cellar hole, about four feet square, over which a house had formerly stood, and which was used, at the time of Colvin's disappearance, as a place for burying potatoes, as was frequently done in those days, but which had afterwards been filled up.

About this time a barn on the Boorn farm was burned, and it was supposed by many that the body might have been concealed under it. Another circumstance occurred which excited much attention. A lad with a dog was walking at a short distance from Barney Boorn's, when the dog began to dig furiously under an old stump. Soon some bones were dug out, and on being examined were pronounced to be human. This was too much for the excited inhabitants. Stephen Boorn had recently removed to the State of New York, but Jesse Boorn was arrested and brought before a Justice of the Peace for examination, on the 27th day of April, 1819, nearly seven years after the supposed murder.

The examination lasted five days and was attended by a large concourse of people. The country was scoured for evidence. The old cellar-hole was reopened, and a large knife, a penknife and a button were found. The large knife and

button were identified as having belonged to Colvin. The bones found in the hollow stump were brought into court, and four physicians were called, who, after an examination, pronounced them to be the bones of a human foot, together with some toe-nails, and perhaps a thumb-nail. One of the physicians, after thinking the matter over, concluded there might, after all, be a doubt about it, and on examining a human skeleton at home was convinced that he had been mistaken, and the next day went into court and retracted his former statement. The other physicians were not satisfied, and to settle the matter sent to a neighboring town and had a leg, that had been amputated and buried, exhumed and brought into court, and, on comparing the two specimens, everyone was convinced that the bones were not human. This dampened the public ardor somewhat, and it is probable that Jesse would have been discharged but that on Saturday he made a statement that he believed Colvin had been murdered, and that his brother Stephen was the murderer; that Stephen had told him the previous winter that he (Stephen) and Colvin were hoeing when they had a quarrel and Colvin attempted to run away; that he struck him on the back part of the head with a club and fractured his skull; that he (Jesse) did not know what had become of the body, but mentioned several places where it might be found. The next Sunday the inhabitants for miles around turned out to search for the remains of Colvin. Stumps were overturned, cellar-holes examined, and the side of the mountain back of the premises carefully searched, but all to no avail; nothing resembling human remains was found.

But the people were not satisfied. A warrant was issued, and two officers were despatched to New York to arrest Stephen Boorn. On their way back they tried to induce him to make a confession, telling him what Jesse had said, and that the facts were strong enough to convict him, but Stephen stoutly maintained his innocence, and this he did when confronted by Jesse. After Stephen was brought back, the examination was continued, but no new facts were brought out,

and they were both held to await the action of the Grand Jury in the following September where the principal witness against them was one Silas Merrill, who was confined in the jail with them, on the charge of forgery. He testified that Jesse made a confession to him in June while they were together in the jail, but whether any such confession was ever made in fact is doubtful. One thing is certain: before the sitting of the Grand Jury, Merrill had been confined in chains, while after that event his chains were taken off and he was permitted to go about the streets. A true bill was found against both Jesse and Stephen for the murder of Colvin.

Meantime public feeling against the prisoners was intense. Almost without exception they were believed to be guilty. Many were allowed to visit them in jail, and even persons of character and influence, and officers of the law, told them that the case was clearly against them; that to confess was the best thing they could do; that if they made a confession an effort would be made to have their sentence commuted to imprisonment for life. Convinced that this was their only hope, Stephen made a written confession, taking upon himself the sole responsibility of the crime, but claiming that he and Colvin had a quarrel, and that Colvin struck him first.

Large crowds of people from Manchester and neighboring towns attended the trial, which was held in the Congregational Church, for the reason that the Court House would not accommodate the multitude, and great interest was manifested by all classes in the result, though but very few could be found who did not believe the prisoners guilty, or who would venture to say a kind word for them.

The evidence against the prisoners was entirely circumstantial and mostly unimportant, with the exception of the confessions, which were objected to by the counsel for the prisoners on the ground that they were extorted by undue influence, and that they did not corroborate each other. The objections were overruled and the confessions admitted. An effort was made on the part of the defense to weaken the effect of the confessions on the minds of the jury by introducing

testimony to show that they were subjected to a strong outside influence previous to and at the time the confessions were made.

The jury, after an hour's deliberation, brought in a verdict of guilty of murder against Jesse and Stephen Boorn, and, though both stoutly protested their innocence, the Chief Justice sentenced them to be hanged on the 28th of the next January.

The Vermont Legislature being in session at the time, a petition for a commutation of sentence was presented to it, with the result that Jesse's sentence was changed to imprisonment for life, but the sentence of Stephen was confirmed. When news of this was brought to Stephen, he suggested to one of his lawyers that Colvin be advertised for, which was done, in a local paper, though nearly everyone thought the move a very absurd one. But the notice was copied into a New York newspaper which, being read aloud in a hotel, was overheard by a guest from New Jersey, who suggested that the description was that of a man working on a farm where he lived.¹ Within a few days Colvin was discovered on the New Jersey farm, brought back to Vermont and fully identified as the man for whose murder two innocent persons had been sentenced to death. Their release from prison followed.

THE TRIAL.²

In the Supreme Court, Bennington, Vermont, November, 1819.

HON. DUDLEY CHASE,³ *Chief Justice.*

HON. JOEL DOOLITTLE, ⁴	} <i>Judges.</i>
HON. WILLIAM BRAYTON, ⁵	

¹ See *post* p. 92.

² *Bibliography.* *"The Trial, Confessions and Conviction of Jesse and Stephen Boorn for the Murder of Russell Colvin, and the Return of the man supposed to Have Been Murdered. By Hon. Leonard Sargeant, Ex-Lieutenant Governor of Vermont. Manchester, Vt.: Journal Book and Job Office, 1873."

*"Mystery Developed or Russel Colvin (supposed to be murdered) in full life and Stephen and Jesse Boorn (his convicted murderers)

November 9.

At the September Term the Grand Jury for the County of Bennington had returned an indictment against Stephen Boorn and Jesse Boorn, of Manchester, in that county, charging them with the murder in that place, on May 10, 1812, of one Russel Colvin. Stephen, it was alleged, had beaten Colvin to death with a club, and Jesse had aided and assisted him. There was a second count charging Jesse Boorn as principal and Stephen Boorn as aiding.

*Calvin Sheldon*⁶ for the State.

rescued from Ignominious Death by Wonderful Discoveries. Containing, I. A Narrative of the Whole Transaction by Rev. Lemuel Haynes, A.M., II. Rev. Mr. Haynes' sermon upon the Development of the Mystery, III. A succinct account of the Indictment, Trial and Conviction of Stephen and Jesse Boorn. Second Edition. Hartford: Published by William S. Marse. R. Storrs, Printer. 1820."

³ CHASE, DUDLEY. (1771-1846.) Born Cornish, N. H., State's Attorney for Orange County. Member Constitutional Conventions of 1814 and 1822. Representative in Legislature 1805-12 and 1824 and Speaker for five years. United States Senator 1813-1819, 1825-1831. Chief Justice Supreme Court of Vermont 1817-1821. Uncle of Salmon P. Chase, Chief Justice of the United States 1864-1873.

⁴ DOOLITTLE, JOEL. (1774-1841.) Born Russell, Mass. Graduated Yale 1799. First Tutor Middlebury College, Vermont, 1800. Admitted to Bar 1801. Gained extensive law practice. Member State Council 1815-1817. Judge Supreme Court Vermont 1817-1824. State Representative 1824. Member Board of Censors and President 1834. Member Corporation Middlebury College 1819-1841. Esteemed highly on account of his studious and faithful characteristics. Died at Middlebury. See Yale College Biog. Sketches 1792-1805. Hemenway Vermont Hist. Gazette. 6 Green Bag. 83.

⁵ BRAYTON, WILLIAM. (1787-1828.) Born Lansingburg, N. Y. Student Williams College in his 13th year but did not graduate. Admitted to Bar Franklin County, Vermont, 1807, and began practice in Swanton. State Representative 1817. Judge Supreme Court 1818-1823, when he resided in St. Albans, but afterwards removed to Burlington and continued practice of law. Published "Reports of the Supreme Court of Vermont 1815-1819." Died in Burlington. See 6 Green Bag. 83, 191.

⁶ SHELDON, CALVIN. (1785-1834.) Born Ruysert, Vt. Graduated Middlebury College 1806. Practiced in Manchester, Vt., until about 1830, when he removed to Oswego, N. Y. Register of Probate District of Manchester six years. Representative of Manchester in Legislature 1820. State's Attorney Bennington County 1815-1821. Died in Oswego. See Middlebury College Cat. of Graduates 1852-3. 1 Vermont Hist. Mag. 224.

Richard Skinner,⁷ *D. Wellman* and *Leonard Sargeant*⁸ for the *Prisoners*.

The *Prisoners* were arraigned and pleaded *not guilty*.

Mr. Skinner moved the Court, in behalf of prisoners, that they might be allowed separate trials.

The motion was disallowed by the Court.

THE EVIDENCE FOR THE STATE.

Judge Skinner. Have known Russel Colvin for many years; he resided with his father-in-law, Barney Boorn, and elsewhere in town. It is about 7 or 8 years since Russel Colvin has been in town to my knowledge. Last spring I attended court of examination; the knife and button and some bones were found in cellar-hole, and were left with Mr. Pratt, who with me, went to Mrs. Colvin and showed her the button and knife. We in her presence rubbed the button, and discovered the color and flower in the center. The knife was an old-fashioned, long jack-knife, and had been much used. We presented them to Mrs. Colvin to know if she recognized them as the property of her late husband.

Amos Boorn. Was present when this knife and button were taken from the cellar-hole. The knife would open and shut as it now does. It was about the

first of May last. The next Sunday we examined a hollow stump, which we pulled up and found two nails and a number of bones. One of the nails appeared to be a thumb nail, the other was so much decayed that it could not be discovered to what it had belonged. Have heard Jesse Boorn say that he believed the knife to be Russel Colvins, and that he felt very bad. The house had been removed from the cellar-hole nineteen years. The stump was sixty rods from the cellar hole, and near the bank of Bat-tenkill river.

The declarations of Nathaniel Boorn when on his death-bed, relative to what had taken place, were now offered as evidence and objected to by *Prisoner's Counsel*,

The COURT. The evidence is inadmissible.

Amos Boorn. Was formerly acquainted with Russel Colvin. He had been absent a long time

⁷ SKINNER, RICHARD. (1778-1833.) Born Lichfield, Conn., but removed to Vermont and was Representative from that State in the Thirteenth Congress, 1813-1815. Judge Supreme Court Vermont 1816. Chief Justice 1817. Speaker Vermont Assembly 1818. Governor of Vermont 1820-1823. Reappointed Chief Justice 1824. Died Manchester, Vt.

⁸ SERGEANT, LEONARD. (1793-1880.) Born Dorset, Vt. Lieutenant Governor of Vermont two years. State's Attorney three years. Judge of Probate twelve years. Member of Vermont State Council of Censors for more than forty years and its President for many years. Resided in Manchester.

from home and again returned. The cellar-hole was not large enough to receive the coffin, it was about three and one-half feet. When the knife was produced at the court of examination, Jesse Boorn asked me if it was not the knife of Pepperell Skinner.

Judge Skinner (recalled. The evening before the hunt for the body of Colvin, Jesse Boorn had a suspicion that the body was buried on the mountain by Stephen, and expressed that suspicion to me. The next day we went in search for it, and on our return he said he had often seen old Mrs. Colvin cut tobacco with the jack-knife which had been found, I understood. The expression was of a sudden. Have heard no other knife talked of.

Truman Hill. Saw this knife soon after it was taken up. The Saturday following the court of inquiry, went into jail to see Jesse. He said that he supposed the knife to be Russell's, and that when the knife was presented to him in the meeting house, at the court of examination, and also when the hat was presented to him, his feelings were such as to oblige him to take hold of the pew to steady himself. He appeared to be much agitated, asked him what was the matter. He answered there was matter enough. Asked him to state. He said he feared that Stephen had killed Colvin, that he never believed so till the spring or winter when he went into William Boorn's shop, where were William Boorn and Stephen Boorn, at which time he gained a knowledge of the manner of Colvin's death, that he thought he knew within a few rods where Colvin was buried.

At this time I had the keys of the prison, had let in Mr. Johnson. When Mr. Johnson came out I went in and found Jesse in agitation. Asked him as before stated, and exhorted him to state the truth and nothing but the truth if he said anything, that every falsehood he told would sink him deeper in trouble.

The COURT suggested the propriety of taking a different course in the examination of witnesses and commence with the beginning of the transaction.

Thomas Johnson. Seven years ago last spring Russel Colvin disappeared from the neighborhood. I lived on the farm adjoining Barney Boorn, the father-in-law of Russel Colvin, at which place Russel Colvin lived. Seven years ago the fore part of last May, I went early in the morning across lots to Mr. Matterson's, when I returned the same way I went. It was between nine and ten o'clock, and crossing Barney Boorn's lot, was in plain sight of the lot that has been described, and getting over the fence in Pettibone's lot, saw the prisoner, Russel Colvin, and his son Lewis Colvin. They appeared to be in a quarrel. Listened, but could not discover the cause. Went home and soon after came to the door and heard the quarrel still going on. Went to the rise of land, when I was in plain sight, and within twenty-five or thirty rods. Kept out of sight myself. Their quarrel had somewhat abated. The persons were the same as before stated, and were picking up stones. I have never seen Russel Colvin since. Stephen told in my hearing on the day of his examination that on the day Russel disappeared, he, Stephen, was plough-

ing on the north side of the ridge, and out of sight of the lot where the four men were picking up stones, that he might have gone over to see the boys, but he was not at work there but was ploughing north of the ridge, and had been for two or three days, and that he never picked up stones with the boys on that lot. Understood Stephen to say that Russel Colvin disappeared at the time he (Russel Colvin) was picking up stones in said lot. Jesse Boorn told me while in prison, that on the day Colvin went off, he, Jesse, was at work at Mr. Briggs' at the north part of the town; that his father came that day to Briggs' to get a horse shod, and he, Jesse, helped set the shoes. Stephen Boorn has since his above statement told me that on the day Russel went off, he was at work for Mr. Hicks, in the forenoon, and Mr. Hammond in the afternoon, mending fence. There had been some talk about the woodchuck they had for dinner on the day Russel went off. Stephen said he killed it when mending fence for Mr. Hammond, and that Lewis Colvin came to Mr. Hammond's to bring home some meat, and that he put the woodchuck into the basket and he returned with it. Bought Mr. Barney Boorn's farm four years ago last December. Ploughed up that fall about four acres. The net spring I planted it. That spring my sheep run in the lot. One day at night the children brought in a hat. Observed that it was the hat of Russel Colvin. Knew it to be his hat. It was very mouldy and rotten, and was the same hat which he had on while digging stone about the time of his disappearance. When I was plant-

ing or hoeing, Mr. Vaughn assisted me. When we were passing the old cellar hole, we stopped to trim some apple trees that grew there. About that time I observed a thrifty apple tree about three feet high growing in the cellar hole. In the course of that season I observed the tree was gone. While I was planting, Jesse Boorn helped me, and told me that his father had given him the use of a patch of land if he would clear it. John Boorn is about the size of Jesse. Might possibly have mistaken him for Jesse, but have no idea that I was mistaken. John is rather thicker and taller than Jesse.

William Boorn, produced to prove that at a time uncertain, Stephen Boorn said that he wished that Russel and Sal. were both dead, and that he would kick them into hell if he burnt his legs off. (Evidence objected to and rejected.)

Lewis Colvin. Am seventeen. Remember the last time that I saw Russel; he was up there in the field next to Mr. Johnson's, picking up stones. Stephen, Jesse, Russel and I were there; do not know the time of year nor how long since. Since then have lived with grandfather. They had been picking up stones several days. A quarrel arose about picking up stones. They quarreled most in the afternoon. Russel struck Stephen first with a small riding stick. Stephen then struck Russel on his neck with a club and knocked him down. Russel rose and struck Stephen. Stephen then struck Russel again with the club, and he fell. Was afraid and ran off to the house; saw no blood. The stick or club was about a foot long and not very large. Stephen told me

the net day not to tell of what took place the day before. Have never heard Stephen say anything about what became of Russel, nor has Jesse said anything about it. Stephen said he would kill me if I said anything about striking. I promised I would not tell. Ran to the house and told grandmother; grandfather was gone to the street. Grandmother sent me to Mr. Sacket's. Did not return till night, as I went to Matterson's to carry meat. Next saw Stephen and Jesse at night down at the house—heard nothing from them about Russel's absence—heard Stephen say that on the day of the quarrel Russel ran away to the mountain, and did not hear Russel's name mentioned by them for a year. My mother had been gone over the mountain for some time. On the day of the quarrel John was ploughing over the ridge, and when I ran home from the field John was at home bathing his team. Did not tell John of the quarrel, do not know the reason.

Cross-examined. Told this story just before the snow went off, one Sunday night, to Mr. Pratt and Mr. Sheldon. Sal never told me this story, do not remember that Stephen killed the woodchuck, the day Russel went off, nor anything about it. Do not know where Jesse lived at that time. He did not live at Briggs'. John was ploughing on the flat side of the lot where the boys were at work; do not remember where Rufus (a younger brother) was at the time. A month after the quarrel, heard mentioned in the family, of Russel's running off, Stephen and Jesse were not present. Stephen said he would kill me if I told of

his striking Russel. This was at the door the day after the quarrel. Lewis then said it was two days after.

Sally Colvin. Better than four years ago Mr. Hitchcock told me I could not swear my child on any person if my husband was living. I went to my father's, stood in the stoop. Stephen told me I could swear the child, for Russel was dead and he knew it, Jesse said I could swear it, but would not. When I returned from over the mountain, about five days after the disappearance of my husband, I asked Lewis where Russel was; he answered, gone to hell. I heard nothing at my father's what had become of my husband.

Eunice Baldwin. Three years ago this fall Stephen told my husband that Russel went off very strangely; that the last that was seen of him he went to the woods, when a number were present, and he mentioned himself and Jesse in particular. Stephen said he did not know but some thought he had killed Colvin. But he said that when Russel went off, Lewis was gone after some drink, when he came back Russel was gone. Lewis asked where Russel was; that he and Jesse answered Lewis, one of them, that he had gone to hell, and the other that they had put him where potatoes would not freeze, and that it was not likely that they should have said so to the boy if they had killed Russel. When this talk was had Stephen lived in Dorset. It was at our house at dinner time, and in the evening; spoke to my husband about it at the time, but said nothing to others till last spring. Stephen said that Sal was one of the devil's unaccountables; had

never before heard of the Colvins.

Daniel D. Baldwin. The first I knew anything of the matter, Stephen was exclaiming against his sister. I then inquired where Colvin was gone. He said that he and the Judge (a nic-name for Jesse), Lewis and Colvin were at work picking up stones together, when Colvin went off into the woods. He said he did not know but some thought he had killed Colvin, and that when Colvin went off, Lewis, the boy, was gone for some water, and when the boy returned, he asked where Russel was, and that one of them replied that he was gone to hell, and the others that they had put him where potatoes would not freeze; which they should not have said if they had killed him. This talk was serious as I understood it, and it took place at dinner time and in the succeeding evening.

Frederick Smith (sworn).

Mr. Sheldon stated that Smith would say that he asked Stephen about four years ago where Russel Colvin was, that Stephen replied he had gone to hell, or that he hoped he had gone to hell. Objected to by *Mr. Skinner*.

(The evidence was rejected for irrelevancy.)

Johnson Marsh. Last spring, in one of the last snows we had, Stephen Boorn was at my house. The girl at my house said, "they are going to dig up Colvin for you, ain't they?" Stephen replied, "damn that Wyman," said that he would thump him, &c. I moderated him. He then said that Colvin often went off, and returned often; that when Colvin went off he was crazy, and went off without his hat, &c., &c. That Colvin, it was said,

was seen at Mrs. Ferguson's when he went off; but that it was now denied. Asked him if he was present at the time Colvin went off; he replied no, he was in Sandgate. Stephen has since denied that he said so.

Benjamin Deming. On 10th of March last saw Stephen in Dorset. He rode with me in my sleigh. While riding he said he knew nothing about Colvin at the time of his going off, that he was not present at that time, nor did he live at home, but lived on the Hammond place. Understood from Stephen that it was the fore part of the week on Tuesday that Colvin went off; that Colvin's wife told him so. That the next Sunday he went to his father's and asked Mrs. Colvin where Colvin was. She told him that Colvin had dined upon a woodchuck, and when he left the house he told her it was the last dinner he should ever eat there, and went off, but she did not know where.

Joseph Lincoln. In March last, heard Stephen say that he never killed Colvin. That he and Colvin and Jesse were picking up stones, and that Colvin was crazy, and went off into the woods, and that they had not seen or heard of him since.

William Wyman. Stephen wanted to know if there was not a way by which he could prevent the intercourse between Russel and Sal. I replied that I knew of none, that they were lawfully married. Stephen then said if there was no other way to put a stop to it, he would put a stop to it himself.

About three or four weeks before Colvin went off, Stephen came to my house and asked me if his father was obliged to sup-

port Colvin's young ones. Told him yes. Stephen asked if it was not hard, and further said if there was no one else to put a stop to it, he would, and he said it with an oath. I was at Barney Boorn's, about the time Russel went off, Stephen was there. Last spring, in March, Stephen Boorn came to my house and talked to me about what I had said concerning his killing Russel Colvin, and wanted I should clear it up, and stated he knew nothing of what was become of Russel Colvin. That he never worked with him to the amount of one hour. That at the time of Russel's disappearance he lived at the Hammond house. That he (Stephen) was ploughing in the same lot.

William Farnsworth. In conversation with Stephen, about two months ago, I questioned him about the killing, cooking and eating the woodchuck, and if he was at home then, and told him that his parents had denied that it was so; he however said it was so, and that his parents had sworn themselves to the devil, and that their condition was worse than his own. Told Stephen that he (Stephen), Jesse, Russel and the boy were together picking stones the day Russel went off, and that his father and mother had denied it, and stated that he and Jesse were not then at home. Stephen replied that it made no odds what his father and mother had sworn to, but that what Tom Johnson had sworn to was true. Had advised him to confess the whole facts which he knew.

William Boorn. Stephen told me last March that he believed he was at work for Glazier, on the Hammond farm, when Colvin

went off, and Jesse told me he was then at work in Dorset or Rupert, and they have both said that they were not at home at that time, nor were they at work about that time, or near it. Jesse never told me that he was at work at Briggs'.

David Briggs. In May, 1812, and in April, Jesse worked for me. The last time he worked but two or three days, and left my house 14th of May. Before he came the last time he had been absent not more than a week. I have a charge for shoeing old Mr. Boorn's horse on 23rd of April. The old man was present at horse-shoeing.

Daniel Jacobs. In 1813, at Dorset, Jesse Boorn was asked by me where Russel Colvin was. He answered that he was an enlisted soldier in the service. I was then as hard of hearing as I am now.

Joshua French. After Jesse was put in gaol I went in to see him. He said he knew that the jack-knife which was found was Russel Colvin's knife, for he had often seen Russel's mother cut tobacco with it.

Silas Merrill. When Jesse had been from time to time returned from examination to prison, he told me that they had encouraged him to confess the whole business with promise of pardon. I had probably told him perhaps it was best to state the whole truth, and he might obtain some favor. The disclosures which were made took place in the night, when he and Jesse had waked from their sleep, and without any previous persuasion or advice on the subject.

In June last, Jesse's father came to the prison and spoke to Jesse. After the old man went

away Jesse appeared much afflicted. We went to bed and to sleep. Jesse waked up and shook me and wanted that I should wake up. He was frightened about something that had come into the window and was on the bed behind him. He stated that he wanted to tell me something. We got up and he went on to tell me. He said it was true that he was up in the lot together with Stephen and Russel Colvin and his son, picking up stones, as Mr. Johnson had testified. That Stephen struck Colvin with a club and brought him to the ground. That Colvin's boy ran, that Colvin got up and Stephen gave him a second blow above the ear and broke his skull. That the blood gushed out; that his father came up and asked if he was dead. They told him no; then he went off. Soon after he came again and asked if he was dead; they told him no, and he again went off. Soon after the old man came the third time and asked if he was dead, they told him no; the old man said damn him. Then he (Jesse) took him by the legs, Stephen by the shoulders, and the old man round the body, and carried him to the old cellar, where the old man cut his throat with a small pen-knife of Stephen's. That they buried him in the cellar between daylight and dark, that he stood out one side and kept watch. That a jack-knife was found which he knew was Russel's, that he had often borrowed it to cut fish-poles. Two or three days after Stephen had Colvin's shoes on. He said he (Jesse) spoke to Stephen and told him that Sal. would know the shoes; that he saw no more of them. That the old man gave Stephen 100 dol-

lars, and Stephen promised \$25 of it to him. After Jesse was put into another room, when we were permitted to see each other, Jesse told me that he had informed Stephen of his having told me the whole affair. Stephen then came into the room. Asked him if he did take the life of Colvin. He said he did not take the main life of Colvin. He said no more at that time. A week or ten days after, Stephen and I went up into the court room together. Stephen then said he had agreed with Jesse to take the whole business upon himself, and had made a confession which would only make manslaughter of it: Told him what Jesse had confessed, and he said it was true. Jesse told me that in February, eighteen months or more after the body of Colvin was buried, there came a thaw. That he and Stephen took up the body, secured the bones and remains in a basket and pulled up a plank in a place where they kept sheep, and put the bones under the floor. That the next spring the barn was burnt. That they took the bones and pounded them up and put them into a deep hole in the river. That the skull bone burnt so that it crumbled to pieces, that his father scratched up some pieces and put them into a hollow birch stump near the road.

Cross-examined. Jesse, when he confessed the affair, did not say the body was removed anywhere till they carried it off as stated. Jesse said that Squire Pratt was gone to talk with his wife, but she knew nothing about it. Jesse wished me not to tell anything of what he said to me. First told Mr. Pratt of Jesse's statement, if I recol-

lect right. Nobody was present in the court room when Stephen told me as before mentioned. Jesse one Sunday, when we were on the bed together, told me he wished to keep counsel, and that he understood that his wife had said something about his keeping watch. Understood from Jesse that Russel struck Stephen first, that they had been jawing all the time for the fore part of the day.

Mr. Shelden offered a written confession signed by Stephen Boorn, dated August 27th, 1819, and stated that Stephen sent for Mr. Pratt, Truman Hill and himself to come to the jail, that they all went there, that Stephen called for paper, ink, &c., and retired and wrote the confession and left it on the table. Mr. Burton saw him write it. That it was taken from the table and has ever since been in Squire Pratt's possession.

Joshua Burton. This is the same paper which Stephen wrote, and which was witnessed by Truman Hill and Squire Pratt, who signed on the back at the same time. Stephen wished me to call Pratt, Hill and Shelden. I did so; they came and let Stephen out. Pratt and Boorn went upstairs, and afterwards Hill went. Soon Pratt came down, and I went up and found Stephen at a table writing this paper; sat down and Hill left the room. Said nothing till Stephen rose from the table, said he had done, and left the room. Went with him, he went into prison, and we went upstairs and found this paper which was signed by Stephen, and which I observed before Stephen left the room.

Mr. Skinner. Do you know

that Stephen had been persuaded either at this time or at any time previous to give this confession, by holding up to his view the hopes of pardon, or some other favor, by some officer, State's Attorney, Magistrate, Grand Juror, Jailor, or Deputy Jailor? I do not.

Have you not heard some of the officers tell Stephen that his case was desperate, that he was gone if he did not confess? No.

Joel Pratt had the same questions put to him by Mr. Skinner, to which he answered no.

Mr. Skinner. Do you know of any persuasion, and if any, what, tending to induce Stephen to make that confession? No.

Mr. Pratt. 27th of August last I was called to see Stephen. I asked him how he did. Shelden, Burton and Hill present. Stephen requested me to go upstairs alone with him. I did so, talked about some small points, alone, as I believe. Stephen called for pen, ink and paper, and I left the room.

Truman Hill. More than once before the confession I exhorted him to tell nothing but the truth, as the only way to pardon and favor, that falsehood would only sink him deeper in trouble.

Saml. C. Raymond. Before the 27th of August, have often told the prisoner to confess if guilty, but not without. Stephen said he was not guilty. I told him then not to confess. Have heard Mr. Pratt and Mr. Shelden tell Jesse Boorn that if he would confess, in case he was guilty, they would petition the Legislature for him. Have made the same proposition to Stephen myself, and often told him I had not any doubt of his guilt, and

that the public mind was against him.

The COURT rejected the written confession.

Joel Pratt. The examination commenced on Tuesday, 27th of April, continued till Saturday, Sunday they went on to the mountain, Wednesday, the second day of the examination, was the digging at cellar hole. The two knives and button were found and handed me by Abel Pettibone. Some few bones were also found, but they were not human bones, and pieces of crockery. After Jesse had seen the knives, he said the jack-knife was Russel's, he knew it, afterwards he said it looked like it. Saturday week or fortnight I heard of the bones under the stump. Sunday morning we went over and found the bones present. Josiah Burton took out the whole nail, and there were also found the part of a nail, and the round lumps now here. The stump is a birch stump, the remains appeared to have been put in the hollow. The stump stood near an old road on Barney Boorn's land, fifty rods or so from the house.

Josiah Burton. Was with Mr. Pratt at the stump and took up the remains.

Amos Lawrence. Heard Stephen tell Sally before Pratt that Sal. might swear her child for he knew Colvin was dead. Jesse said they need not look for Colvin's bones, for he went off, and nobody knew where he had gone to.

William Farnsworth (sworn).

Mr. Sheldon. The witness will prove what Stephen told him when he and Stephen were alone, about his being present when Russel was killed. Objected to

by *Mr. Skinner* because it was subsequent to the proposition made by Mr. Raymond.

The COURT decided that the witness, Farnsworth, should be examined.

Mr. Farnsworth. Neither I nor anybody else, to my knowledge, had done anything directly or indirectly to influence the said Stephen to the talk I am now about to communicate.

About two weeks after the written confession, Stephen told me he killed Russel Colvin, that there was a quarrel, and that Russel struck at him, that he struck Russel and killed him; that he put him into the bushes, that he buried him and dug him up, put the remains under the barn, which was burned, the bones were taken up and put into the river just above the deep hole, that he scraped up the remains and put them into a stump, that he knew the nails which were found were Colvin's, that no person was present, that he perpetrated the whole business himself. Asked him about the jack-knife, he said it was Russel's, he knew it as soon as he saw it. Told him the case looked dark, he replied that if Jesse had held his tongue in they should have done well enough, that he put the pieces of bones under the stump through a hole between the roots, and stamped the dirt down. He said he wished he had back that paper; I asked him what paper? He said, haven't you seen a paper that I wrote?

Mr. Skinner. As Mr. Farnsworth has, contrary to my expectations, been allowed thus to testify, I now in behalf of the prisoner, call for the written confession.

It was read as follows, viz:

"May the 10th, 1812, I, about 9 or 10 o'clock, went down to David Glazier's bridge, and fished down below Uncle Nathaniel Boorn's, and then went up across their farms, where Russel and Lewis were, being the highest way, and sat down and began to talk, and Russel told me how many dollars benefit he had been to father, and I told him he was a damned fool, and he was mad and jumped up, and we sat close together, and I told him to set down you little tory, and there was a piece of beech limb, about two feet long, and he caught it up and struck at my head as I sat down, and I jumped up and it struck me on one shoulder, and I caught it out of his hand and struck him a back handed blow, I being on the north side of him, and there was a knot on it about one inch long. As I struck him I did think I hit him on his back, and he stooped down and that knot was broken off sharp, and it hit him on the back of the neck, close in his hair, and it went in about a half of an inch on that great cord, and he fell down, and then I told the boy to go down and come up with his uncle John, and he asked me if I had killed Russel, and I told him no, but he must not tell that we struck one another. And I told him when he got away down, Russel was gone away, and I went back and he was dead, and then I went and took him and put him in the corner of the fence by the cellar hole, and put briars over him and went home and went down to the barn and got some boards, and when it was dark I went down and took a hoe and boards, and dug a grave as well as I could, and took out of his pocket a little barlow knife, with about a half of a blade, and cut some bushes and put on his face and the boards, and put in the grave, and put him in four boards on the bottom and on the top, and t'other two on the sides, and then covered him up and went home crying along, but I want afraid as I know on. And when I lived at Wm. Boorn's I planted some potatoes, and when I dug them I went there and something, I thought, had been there, and I took up his bones and put them in a basket, and took the boards and put on my potato hole, and when it was night, took the basket and my hoe and went down and pulled a plank in the stable floor, and then dug a hole, and then covered him up, and went in the house and told them I had done with the basket, and took back the shovel, and covered up my potatoes that evening, and then when I lived under the west mountain, Lewis came and told me that father's barn was burnt up, the next day, or the next day but one, I came down and went to the barn and there were a few bones, and when they were at dinner I told them I did not want my dinner, and went and took them, and there were only a few of the biggest of the bones, and throwed them in the river above Wyman's, and then went back, and it was done quick, too, and then was hungry by that time, and then went home, and the next Sunday I came down after the money to pay the boot that I give between oxen, and went out there and scraped up them little things that were under the stump there, and told them I was going out fishing, and went, and there was a hole, and I dropped them in and kicked over the stuff, and that is the first anybody knew

it, either friends or foes, even my wife. All these I acknowledge before the world.

STEPHEN BOORN."

"Manchester, August 27, 1819."

Abel Pettibone. That hat Mr. Johnson's folks found I know

to be Russel Colvin's.

THE EVIDENCE FOR THE PRISONERS.

Mrs. Ferguson. Russel Colvin was at our house about a week or more before he was finally missing. Staid there two hours in the forenoon, and went away home; it was about the 9th or 10th of May. Russel did not use to go about the country without a hat, but was careful of his hat, and did not use to go away without notice and preparation. The time mentioned was the last time I ever saw Russel; am Russel's sister.

Sally Colvin. He used to get up, take the boy on his back, and go off and stay a day or two without saying anything about it. Once I understood he went off and staid eight or nine months; was not then at home, and think he was not in his right mind.

Wm. Wyman. Russel used to go from home, once he carried the boy and staid eight or nine months. We then often heard from him with his boy. Have heard that his father lived in Rhode Island.

Squire Pratt. Russel was once absent to find his father to get a deed, some eight or nine months, and after that a shorter time. Was often heard from, was running around town often. Was a weak man in mind, was small, but smart for business. Was once confined for a night or two for threatening to burn a house.

Truman Hill. Lewis testified before the Magistrate that he

and his father were alone in picking up stones. That his father went throwing rails about, acted strangely, that nobody else was present; that he ran to the house and told of it.

Mr. Wellman. After Jesse had confessed to Merrill, I heard of it. Inquired of Merrill if Jesse had confessed to him. He said he had not made a confession.

Mr. Skinner proposed to show that Merrill, previous to his disclosure before the grand jury, was confined in chains, and afterwards was freed from them, and had been permitted to be about the streets. Objected to by *Mr. Sheldon*, but admitted by the COURT.

Cyrus Munson. Merrill was in chains in gaol, till the session of the grand jury. The chains were taken off by the officer sent for him by the grand jury, and when Merrill was returned from grand jury, the chains were put on, if I recollect; and the chains since the court have not been on, and he has been laboring with me in the field. Had always been in my view except when intrusted with a brother of mine. I am gaoler, and before the disclosure I took him out of the gaol, but did not take his chains off. Before the session of the grand jury there were a large number of prisoners in gaol, and since then those who remain have been treated with more leniency. I do

not remember of seeing Farnsworth alone with the prisoner, though he was often at the gaol. Stephen was once offended with Farnsworth for inspecting too closely his chains.

Mr. Sheldon offered to prove that the prisoner's wife told Lewis that he must testify as he had been before directed, or her husband would kill him.

The evidence was rejected by the COURT.

Thomas Johnson. I think, but am not positive, that the apple tree, which was not more than three years old, was growing after the barn was burned. The cellar-hole was about four feet square.

Mrs. Ferguson. The barn was burned four years ago last March.

Mr. Johnson. I bargained for the farm in the summer of 1814. In December, 1814, I took the deed; in the fall before I took the deed I ploughed some on the place, and might have discovered the tree in the fall, but my strongest impression is that it was in the spring of 1815 that I saw the tree.

Michael Johnson 2d. Think I saw the apple tree in the spring when we were trimming apple trees. Mr. Vaughn was present.

Squire Pettibone. Jesse's examination begun on Tuesday and ended on Friday. Mr. Pratt, Josiah Burton, and myself, advised Jesse to confess the facts, that it was best for him. The night Stephen returned from the west all who were present advised Jesse to confess the truth and nothing else. Stated that they had got Stephen, and that he might be made a witness if he appeared innocent, but all urged him to state nothing but what

was true. That if he was innocent and did not confess he might suffer with Stephen on his former confession and denial. Burton once said to Stephen, you are a gone goose and had better state the facts than not.

Samuel C. Raymond. I and Mr. T. Hill went to the westward and brought Stephen to this State. We tried to get facts from him by persuasion, to confess frankly and honestly the whole truth. We told Stephen that the evidence was enough to convict him, but whenever we stated the evidence to him we stated it correctly.

Truman Purdy. Mr. Pratt, Sheldon and others, told Jesse after Stephen's arrival, that it was probably the last chance he would have to confess the truth. Jesse said, if it is not true shall I confess? They answered him, certainly not. Jesse did not then confess anything. Much the same propositions were made to Stephen the same day. He was told it was the only course he could take. That Jesse had refused to confess, that it might save him (Stephen). Stephen said he had a good bottom to stand upon, and he would not confess anything.

Squire Hickock. I have often talked with the prisoners and heard others; do not remember any encouragement offered them. Jesse was asked, would it not be better to own the truth; he made light of it. Stephen was told what Jesse had stated, and was asked if he did not think it better to own the whole truth. That if he refused there would be no chance for them. Stephen also made light of it.

Sally Colvin. Recognized the button found at the cellar hole

to be a button worn by Colvin the last time I saw him and which he had worn for many years on his clothes.

Thomas Johnson. The apple tree had no leaves on it at any time that I saw it, as I now remember; think I have seen it more than once. When I discovered it to be gone, the ground

about the cellar hole appeared to have been moved, logs were taken from the fence and thrown in various directions, had no suspicion at the time, nor till the winter of 1818.

Michael Johnson, 2d. Do not remember that any leaves were on the apple tree, think there were not.

JUDGE DOOLITTLE charged the Jury on the law of homicide and CHIEF JUSTICE CHASE as to the evidence. The CHIEF JUSTICE told the Jury that no weight should be attached to a confession incited by hope or fear, but left it to them to say whether the confessions in this case were so influenced.⁹

The *Jury*, after an absence of one hour, brought in a verdict of murder in the first degree against both *Prisoners*.

The *Prisoners* being asked if they had anything to say why sentence of death should not be pronounced against them, both stoutly protested their innocence.

The CHIEF JUSTICE sentenced them to be hanged on the 28th day of January, 1820.

THE RETURN OF THE VICTIM.

Notwithstanding the general feeling against the prisoners, there were many who had doubts on the subject, and a petition was signed and sent to the State Legislature then in session, asking a commutation of the sentence. The Chief Justice made a statement of the evidence from his notes and after a spirited debate the sentence of Jesse Boorn was commuted to imprisonment for life by a vote of 104 to 31, but the appeal of Stephen Boorn was rejected by a vote of 97 to 42.

When Mr. Sargeant returned from the capital and communicated the result of his mission to the prisoners, Jesse was very much elated by the favorable news in his case, and Stephen was correspondingly depressed, and with tearful eyes asked if nothing more could be done. Mr. Sargeant said they had made every effort possible. Then said Stephen, "I suppose I must die," but before Mr. Sargeant left the cell he asked if it might not possibly be of benefit to advertise in the papers for Colvin. Mr. Sargeant replied that if Colvin was murdered of course it would avail nothing, and asked him

⁹ Neither the arguments of Counsel nor the charge of the Judges have been preserved in any form.

in plain terms, "Did you murder Colvin as you confessed you did?" Stephen protested his innocence in the strongest language, and Mr. Sargeant promised to do as suggested, and accordingly the following notice was published:

MURDER.

Printers of newspapers throughout the United States are desired to publish that Stephen Boorn, of Manchester, in Vermont, is sentenced to be executed for the murder of Russell Colvin, who has been absent about seven years. Any person who can give information of said Colvin, may save the life of the innocent by making immediate communication. Colvin is about five feet five inches high, light complexion, light colored hair, blue eyes, about forty years of age.

Manchester, Vt., Nov. 26, 1819.

But in the same issue of the newspaper was an editorial maintaining that there was no possibility of a doubt that Colvin was murdered, and ridiculing what it termed a foolish attempt to advertise for information concerning him. The notice was copied into the New York Evening Post of November 29, 1819. The next day it happened that the notice was read aloud in one of the hotels in New York. A gentleman standing near, named Whelpley, listened to it and then remarked that he had formerly lived in Manchester, and was well acquainted with Colvin, and related many anecdotes and peculiarities concerning him. Mr. Tabor Chadwick, of Shrewsbury, N. J., was also standing near and listened to the conversation, which made a deep impression upon his mind. After his return home it occurred to him that a man then living with his brother-in-law, Mr. Wm. Polhemus, of Dover, New Jersey, answered exactly the description of Colvin as given by Mr. Whelpley. The more he considered the matter the more he became convinced that this must be the man, and finally he wrote the following letter to the Evening Post:

"Shrewsbury, Monmouth, N. J., Dec. 6.

"To the Editor of the N. Y. Evening Post:

Sir: Having read in your paper of November 29th last, of the conviction and sentence of Stephen and Jesse Boorn, of Manchester, Vt., charged with the murder of Russell Colvin, and from facts which have fallen within my own knowledge, and not knowing what facts may have been disclosed on their trial, and wishing to serve the cause of humanity, I would state as follows, which may be relied on: Some years past (I think between five and ten), a stranger made his appearance in this county and upon being inquired of, said his name was Russell Colvin—that he came from Manchester, Vermont. He appeared to be in a state of mental derangement, but at times gave considerable account of himself, his connections, acquaintances, etc. He mentions the names of Clarissa, Rufus, etc. Among his relatives he has mentioned the Boorns above, Jesse, as Judge (I think),

etc., etc. He is a man of rather small stature—round forehead—speaks very fast, and has two scars on his head, and appears to be between 30 and 40 years of age. There is no doubt but that he came from Vermont from the mention he has made of a number of places and persons there, and probably is the person supposed to have been murdered. He is now living here, but so completely insane as not to be able to give a satisfactory account of himself, but the connections of Russel Colvin might know by seeing him. If you think proper to give this a place in your columns, it may possibly lead to a discovery that may save the lives of innocent men—if so you will have the pleasure, as well as myself, of having served the cause of humanity. If you give this an insertion in your paper, pray be so good as to request the different papers in New York and Vermont to give it a place in theirs.

I am, sir, with sentiments of regard, yours, etc.,

Tabor Chadwick."

A similar letter was written by Mr. Chadwick to the postmaster at Manchester, but as every one scouted the idea of Colvin's being alive, little notice was taken of it, and nothing done in regard to it. Mr. Whelpley of New York, however, became convinced that the man described by Chadwick was the real Colvin, and determined on his own responsibility to go to New Jersey and find out the truth, though his expenses in the case were afterwards paid by an order on the city treasury from De Witt Clinton, Mayor of New York. On arriving at the house of William Polhemus, in Dover, Monmouth County, with whom the man supposed to be Colvin lived, and making known his errand Mr. Polhemus said there was such a man in his employ, that he had made known very little of his past history, that he at first gave his name as Colvin and afterwards changed it, that he was evidently deranged, but was a good, faithful man, and imagined he owned the farm of his employer. He was at this time in the field at work, and it was agreed that on his return nothing should be said to him by Mr. Whelpley, at first, to see if Colvin would recognize him. Returning from his work and seeing Whelpley he looked at him very sharply, but said nothing. After some time Whelpley spoke to him calling him by name. He said Mr. Whelpley must be mistaken, Colvin was not his name, it had been once, but he was another man now, and denied all knowledge of Manchester and his former associates.

At last Mr. Whelpley said. "I see you have a scar on your forehead, how did you get that?" Colvin replied, "chopping on the mountain" for such a man, naming one of his old neighbors in Manchester, which circumstance Whelpley knew to be true, and by gradually drawing him out made him show some interest in his former friends and acquaintances, and he related so many incidents and trivial matters that there could be no doubt of his identity.

It took Mr. Whelpley several days to induce Colvin to go back to Vermont, but at last he succeeded, in the meantime writing a letter

to Manchester stating that Colvin had been found and was then on his way to that place. A few people began to believe that it might be true, but the greater part were still incredulous, and many bets were made as to his being the genuine Colvin. On arriving at Bennington the County Court was in session. Some one rushed in and said that Colvin had come and the Court broke up in the greatest confusion, and Judges, Clerk, Sheriff, Lawyers and spectators jumped over benches and rushed through windows and doors to see the man whom all had believed dead, and for whose supposed murder some of them had been instrumental in having two men sentenced to be hanged. He was immediately recognized by all who formerly knew him. After a short delay the party proceeded to Manchester, a courier being sent in advance to announce his arrival. All along the route people gathered in crowds to see him, and when the stage drove up to Captain Black's tavern at Manchester, a crowd had collected and the wildest excitement prevailed. Cannon were brought out and Stephen Boorn was taken from the jail to fire the first in token of his joyful escape from death. The most extravagant expressions of joy were indulged in by the people who, at last convinced of their error, were only too glad to make reparation. On being brought to the prison, and seeing the fetters which were still on the limbs of Stephen Boorn, Colvin asked, "What is that for?" Boorn replied, "Because they say I murdered you." Colvin answered, "You never hurt me. Jess, struck me with a briar once, but it did not hurt me much." Colvin's wife was presented to him, but he remarked, "that is all over with," and would take no further notice of her. For two or three days large crowds collected from neighboring towns to see the man who was believed to be murdered, and all rejoiced at the unlooked for termination of the affair.

There could now be no doubt of the innocence of the Boorns, but they could not be released from custody without due process of law. Mr. Skinner immediately wrote to the Judges of the Supreme Court then in session in Addison County, that Colvin was alive and then in Manchester. The Judges advised States Attorney Sheldon that they did not believe it could be Colvin, and directed him to make the most searching examination to guard against deception. Colvin was accordingly questioned most thoroughly, and told so many little incidents that could not have been known to an imposter, however well posted, that there could be no doubt in the mind of any rational person as to the identity of the man.

After remaining in Manchester a few days he requested to be taken back to his home in New Jersey, which was done, and he died there a few years subsequent.

A few days before the time appointed for the execution of Stephen Boorn, the Judges of the Supreme Court stopped over night at Manchester, on their way to Bennington. Mr. Sargeant called upon them and after talking about the case some time, Judge Brayton said: "Well, Brother Sargeant, what are you going to do about it? I suppose you have some plan concocted." Mr. Sargeant said the case was without precedent as far as he knew, and he should petition the

Court for a new trial on the ground of newly discovered evidence. There was some difference of opinion among the Judges on the subject, but they finally decided it to be the right course to pursue. A new trial was granted, a *nol pros* immediately issued by the prosecuting officer, and both prisoners were set free.

THE TRIAL OF WILLIAM FARQUHAR AND JOHN H. CLARK FOR ASSAULT AND BATTERY, NEW YORK CITY, 1816.

THE NARRATIVE.

One hot night in the first part of the nineteenth century, a citizen of New York with a young man from Albany, were returning home, when they came across a man and his wife in rather earnest conversation with a city watchman. They took up the cause of the lady and it resulted in a fight which ended in the watchman being knocked down and his club taken from him. But the noise brought other city guardsmen to his rescue and the two men were taken to the watch house where they were obliged to spend the night. And later they were indicted by the Grand Jury for Assault and Battery. The Judge told the jury on the trial that the interference was uncalled for and unnecessary, for was not the woman's husband on the ground and able to protect her; and the citizen was found guilty and fined.

THE TRIAL.¹

In the Court of General Sessions, New York City, July, 1816.

HON. RICHARD RIKER,² *Recorder.*

July 30.

William Farquhar and John Hyde Clark having been indicted by the Grand Jury for an assault and battery committed on Edward Graves, a watchman in the city, their trial came on today, both pleading *Not Guilty*.

*Mr. Maxwell*³ and *Mr. Rodman*, for the Prosecution.

Mr. Wilkin,⁴ for the Prisoners.

¹ The New York City Hall Recorder. See 1 Am. St. Tr. 61.

² See 1 Am. St. Tr. 361.

³ See *Id.* 62

⁴ See *Id.* 62.

THE EVIDENCE.

It appeared, from the testimony of the witnesses, that on the night of the 10th of July last, the house of Francis Page, near the corner of Hester street and the Bowery, was broken open, and property to a considerable amount stolen therefrom, by some person or persons unknown. Edward Graves was the watchman stationed near that place; and the next evening, between the hours of ten and eleven, being on his duty near the place, he heard an expression or caution fall from Page to a third person, then passing along near Graves, "Take care or you will be robbed." Graves surmised that the expression was intended to be applied to him, on account of what had taken place the preceding night, and remonstrated with Page with some severity, who endeavored to convince him that the caution was not intended to apply to him.

The watchman was not satisfied with the explanation made by Page, whose wife, then on the stoop, commenced a dispute with the watchman, in relation to the remark made by her husband. The tone of the watchman's voice was loud and boisterous, but it appeared by the testimony of Page and his wife, that she was not insulted. At this time, Far-

quhar and Clark, his companion, a young gentleman from Albany, came along the street, and Farquhar interfered in the dispute, by saying, Mr. Watchman, it appears to me that you regard matters of little consequence and neglect those which are greater. He also remarked that the watchmen were continually out of the way. The watchman said, Who are you? and told the other to mind his own business. Farquhar insisted that he had a right, as a citizen of New York to interfere when a lady was abused.

The quarrel increased and as Farquhar approached the watchman, whose orders were not to suffer any person in the night to approach near enough to disarm him, he pushed Farquhar and told him to go about his business. A violent assault was then commenced by Farquhar in front, while Clark from behind seized the watchman's club, which was wrested from his hands. He called his fellow watchman to his assistance, when the two gentlemen were seized and carried to the watch house, where they remained during the night.

Farquhar was very abusive and boasted he had disarmed the watchman.

Mr. Wilkin urged to the jury, that the defendants ought to be acquitted, because the interference in favor of the lady was just and natural; and because after an assault committed by the watchman on a citizen, and after confining him in the watch house during the night, the same watchman had the unparalleled impudence to come into this court and complain of an assault and battery.

Mr. Maxwell expatiated on the relative duties of citizens towards that department of the police, whose rights were then under consideration. The lives and property of the citizens were guarded by the watchmen, during the hours of silence and repose; and in this city, every thing dear and valuable depended on the free and independent exercise of their duty. Whenever their rights were violated, the strong arm of public justice should be extended for their protection. On this occasion, he hoped, that the gallant, gay Lothario, who had so officiously interfered for a lady, whose husband was then present, ready to redress her wrongs, would receive the marked animadversion of the court and jury, however great might be the disparity in situation between himself and the prosecutor.

The COURT charged the jury that, in this affair, the interference of Farquhar was very questionable; and that if the jury believed the testimony on behalf of the prosecution, it would be their duty to find him guilty.

The Jury returned a verdict of *Guilty* as against Farquhar and *Not Guilty* as against Clark and the COURT sentenced the former to a fine of one hundred dollars.

THE TRIAL OF LUCRETIA CHAPMAN FOR THE MURDER OF WILLIAM CHAPMAN, ANDA- LUSIA, PENNSYLVANIA. 1832.

THE NARRATIVE.

Lucretia Chapman was a native of Massachusetts; her maiden name was Henshaw. She was a woman of strong passions, of some education, and great activity, and was at the head of a boarding school in Philadelphia when she married William Chapman, a physician, who devoted his attention to the cure of persons afflicted with infirmity of speech. He was a man of little knowledge or decision of character, and his wife continued to be the active person in the establishment, which was removed after their marriage, to Andalusia, Pennsylvania.

One night in May, 1831, a young man, poorly dressed, and apparently fatigued with traveling, stopped at Mr. Chapman's and asked leave to spend the night there, saying that he had been refused lodgings at the nearest tavern, representing himself to be the son of the Governor of California, and that his name was Lino Amalio Espos y Mina. Mr. Chapman's was not a public house, but travelers not infrequently stopped there, as the tavern was at some distance. Mrs. Chapman understanding his broken English better than the rest of the family, and being interested by the history of his disasters, persuaded her husband against his inclinations to permit the stranger to remain. He said he had come from Philadelphia that day, and was on his way to Count Bonaparte's, where he should find a friend who would supply him with money, and the next day or so, Mina went with Mrs. Chapman, in her carriage, to Bonaparte's, and when they returned, he reported that his friend was not there, and that Bonaparte was engaged with company and could not see him. So well did he follow up the good im-

pression he had made upon the woman that his stay at Andalusia was prolonged till midsummer, professedly for Mrs. Chapman to instruct him in English, in which he was not proficient; for which he was to pay her two thousand dollars a year. He for a while got Mr. Chapman's confidence, who wrote to Mina's father, informing him of his son's arrival at his house, and saying that he would stay there until he could hear from his father. Mrs. Chapman wrote to his mother on the same day, expressing a great interest in her son, and saying that he would remain with them, under her instruction in the English language. "Indeed," she said, "your son talks of spending three years in my house, which I hope he will do; and if he does, you may rest assured, madam, that parental attentions shall be extended to him by myself and my husband."

During this time a strong infatuation had taken possession of Mrs. Chapman: she treated her husband harshly, and often with contempt, and gave her money and her thoughts to the Mexican. He frequently drove with Mrs. Chapman, and on one occasion he lay with his head in her lap, and they sang scraps of love songs to each other. Mina said that he was subject to fits; and whenever he was attacked, Mrs. Chapman would turn every one else out of the room, because he did not like to have people with him when he recovered, but she shut the door and remained with him herself. They used to kiss each other, and there was some evidence of adulterous intercourse. Several inmates of the house swore that Mrs. Chapman treated her husband in a most unbecoming manner. One of the servants testified that she gave Mina some of Mr. Chapman's fine linen shirts, and then told her husband that she was mistress in her own house, and should do as she pleased; that she was ashamed of him, and wished he was gone from the house.¹

Mina gave Mrs. Chapman a paper, which he indorsed "Don Lina's Will," which was signed by him, purporting to leave to Mrs. Lueretia Chapman the sum of fifteen thousand

¹ Ellen Shaw, p. 116.

dollars "for having assisted me, with particular attention, before my death, which sum will be paid in Mexico." One day, Mrs. Chapman's little daughter found Mina leaning against the barn, crying; and he said he heard a voice like his mother's or his sister's saying, "Linetto, Linetto, Linetto," and he should soon hear of the death of one of them. In a short time he heard of the death of his youngest sister; Mrs. Chapman went with him, and ordered a tailor to make him a suit of black, and charge it to Mr. Chapman. A day or two after he had the clothes, he said he had heard that his sister was not dead, as a friend of his from Mexico had seen the family, and they were all well.²

At last, Mr. Chapman began to suspect that all was not as it should be; and when Mrs. Chapman went with Mina to Philadelphia, with the intention of returning the same evening, and they did not return until the third day, he became uneasy, and said to a caller, "I believe that this Mina is an imposter; a roguish fellow. I had rather be poor than have my peace so disturbed. In all probability their object is to tarry until the family has retired; and I would like to know whether they would be guilty of improper conduct after they do return; for if I know of their going together at Mina's lodging-room, I will be there and by —— I'll take his life." And he said to the same person that his wife's affections were gone from him; that he could not confide his troubles to his neighbors; and that he would bear it no longer.³

On the 16th of June, Mina went to a druggist's in Philadelphia, and asked for some arsenical soap, to prepare birds for being stuffed; and when it was not kept ready made, he preferred to take a shilling's worth of pure arsenic to waiting till the soap could be prepared. An assistant in the drug store, about this time, wrote a letter to Chapman at Mina's request, and signed it, "Est Cuesta," which he believed to be Mina's name. This letter expressed the writer's sense

² *Lucretia Chapman*, p. 188.

³ *Edwin B. Fanning*, p. 163.

of obligation to Mr. Chapman for the kindness he had shown to the friendless Mina, and continued: "I hasten to put myself at your disposal, and assure you that any commands you may think proper to honor me with, I will, to the fullest extent in my power, accomplish immediately." Colonel Estanislao de Cuesta was the consul of the Mexican government for the city of Philadelphia.

On the 19th of June, Mr. Chapman not feeling well, sent for Dr. Phillips, who recommended some mild course of treatment, and told him he might eat beefsteak. Mrs. Chapman said he had been subject to attacks of vertigo, and nothing was thought of the attack till the next day, when, immediately after eating some chicken broth, he was seized with the most violent vomiting, and a burning pain in the stomach. The broth was made by his wife, in the kitchen, and carried by her to the parlor to be seasoned. He also ate of the chicken so heartily, that, when his wife saw how little was left, she exclaimed to her daughter, "How heartily your father has eaten of the chicken, and how little of the soup! I am afraid it will hurt him." He continued to suffer from violent attempts to vomit, until, when the doctor again visited him on the 21st, he found him *in articulo mortis*. When Dr. Phillips and Dr. Knight visited him on the 22nd, they found his senses were impaired, his hearing was almost gone, his extremities were cold, his pulse was barely perceptible, and he expired in a comatose state early on the morning of the 23rd. It was supposed that he died of cholera morbus, although the physicians were not certain that such was the fact. Mina was in the room part of the time during Mr. Chapman's sickness, and said to a person who was taking care of him, who was the same who testified to the indignation of Mr. Chapman at his wife's conduct with Mina, that "When I was sick, Mr. Chapman did wait on me night and day, and prayed for me;" and, continued the witness, "he then pretended to cry, but I saw no tears."⁴ The remains of the chicken and broth were thrown into the yard. Near

⁴ Dr. Phillips, p. 124; Dr. Knight, p. 125.

the yard was a neighbor's pond where he kept a number of ducks, who, on that day crept through into Mr. Chapman's yard, and when they returned they were seen to fall over and die to the number of twenty or thirty. Those that died were young ducks. There were four old ducks too large to get into Mr. Chapman's yard, and they did not die. Those that died were buried, and some time afterwards, on examination, the bones and the craw were found in perfect preservation, and covered with something in "little fine pieces, and they fairly glittered they were so white."⁵

Mr. Chapman's remains having been removed from the grave, on the 21st of September, a post-mortem examination was made by Dr. Hopkinson with a view of deciding whether Mr. Chapman's death was caused by poison. Dr. Hopkinson took the stomach from the body, and placing it in a glass jar, carried to Dr. Jno. K. Mitchell's laboratory in Philadelphia. Dr. Reynell Coates assisted Dr. Hopkinson in his examination of the body, and Dr. Mitchell proceeded, with Thomas G. Clemson, to analyze the stomach and contents.

The stomach was very nearly or entirely empty. It was washed and the water in which it was washed, with whatever was taken from the stomach, was submitted to various tests, from which it was ascertained that arsenic did exist in the liquid, in the state of arsenical acid, in combination with lime. The stomach itself was dissolved in nitric acid, and the solution was submitted to several tests, for the discovery of arsenic or other poison in metallic form; which, however, could not be done. Parts of the resultant was placed in a glass tube, and heated over a spirit lamp, in order to produce the arsenical rings, which would have been conclusive proof of the presence of arsenic. No such rings appeared. The heat of the lamp broke the tube. Mr. Clemson exclaimed, "Is any one subliming arsenic in the room?" and smelling the tube, said he was confident that there was arsenic there. The testimony concerning the proof of the

⁵ Benjamin Boutcher, p. 127.

presence of arsenic, from an alliaceous odor was somewhat contradictory. Mr. Clemson testified, in his cross-examination, that "a man can smell the shadow of a shade of arsenic;" but Dr. Mitchell would not allow the single comparative fact of the presence of the smell to form any part of the foundation of his opinion.

Dr. Bache, who was a witness for the defendant, declared it as his opinion that the odor was not to be depended upon, because some substances have some analogy in odor. And Dr. Tognio, another witness for the defendant, "would not rely on the alliaceous odor." Dr. Coates testified that "a man may die by arsenic, and from vomiting and purging no trace of it afterwards be found."

The day after Mr. Chapman's death, Mrs. Smith came to the house for the purpose of placing her two children at Mrs. Chapman's school. She saw Mina but observed nothing uncommon in the state of the family. She carried her children there four or five weeks afterwards, and found Mrs. Chapman in the utmost grief. After a few words of preface, Mrs. Chapman, said to Mrs. Smith, "This young man, of whom you have heard me speak, who has been boarding with me, I fear has turned out an impostor." She then gave Mrs. Smith a history of her acquaintance with Mina, adding, that "if the consul's sister had not told her that this young gentleman was a gentleman of large fortune, I should not have been deceived." And she went on to say that, just before he left her, Mina asked her for her watch. She told him that he had Mr. Chapman's already; but he said he wanted hers, as a memento of regard. He took the watch, giving her a chain, and saying, "I give it to you in return for the watch. When I come back you shall have it." He then went away, taking all the money in the house. Mrs. Chapman finding the chain irritated her neck, took it to a jeweler, who told her it was nothing but brass. "I then made up my mind that I hoped he would never come back;" and he never did until he came under the charge of an officer.⁶

⁶ Mrs. Smith, p. 129.

On the 15th of July, Mrs. Chapman was secretly married to Mina, who immediately set out for the North.

The Recorder of Philadelphia, hearing that Mina had obtained money in Washington and elsewhere under false pretenses, went, about the last of August, to Mrs. Chapman's and told her his suspicions of Mina, and asked her if he had plundered her of her property. She answered, "No," pretty promptly. He asked her if it was possible that he had five hundred dollars of the notes of the Farmers' Bank, in Bucks County, when he left Bucks to go to Baltimore. She immediately answered that it was impossible. He then told her of an advertisement of his having lost that sum in notes upon that bank, and that he had used that advertisement for the purpose of defrauding several persons in Washington and that, therefore, it was his duty to see that he was arrested. The recorder then asked her if nothing had occurred within her observation to make her suspect that Mina had administered poison to her husband. There was a "very marked effect upon her countenance" when his meaning became plain to her. She made a great effort to recover herself and succeeded and answered, No; she had seen nothing of the kind. She then detailed to the recorder the circumstances of her husband's death, and of Mina's departure, after which the recorder returned to Philadelphia.

On the 10th of September, Mrs. Chapman went to the recorder's office, in Philadelphia, and told him she had been deceived and injured by Mina, and asked the recorder to give her advice in her trouble. He told her that she had been very imprudent, and that it was very difficult to advise her; that one course only could possibly do any good—to convince the public that she had been through the whole a victim of deception; and that she ought to show her sincerity by aiding, by all means in her power, to bring Mina to justice. She then gave him details of his conduct, and of their marriage, and showed him a certificate from the Mexican Minister, resident at Washington, certifying that Mina and Mrs. Chapman were lawfully man and wife. The moment the recorder saw it, he knew and said it was a forgery, and

he must retain it to enable him to detain Mina on a charge of forgery in Pennsylvania.⁷

In September, Mina was arrested in Boston, and both he and Mrs. Chapman were indicted at the Court of Oyer and Terminer, at Doylestown, for the murder of William Chapman, by poison. Mrs. Chapman was tried first and no less than twenty-five witnesses were called for the prosecution, and twenty-three for the defense. Judge Fox charged the jury rather in Mrs. Chapman's favor though he said that from the evidence, it was clear that arsenic was found in Mr. Chapman's stomach. The jury after two hours' deliberation brought in a verdict of not guilty.

THE TRIAL.⁸

In the Court of Oyer and Terminer, Doylestown, Pennsylvania, February, 1832.

HON. JOHN FOX,⁹ *President.*

HON. WILLIAM WATTS, }
HON. WILLIAM LONG, } *Associates.*

February 14.

On December 14, 1831, the Grand Jury for the County of Bucks returned an indictment for murder against Lucretia

⁷ J. McIlvane, p. 144. .

⁸ *Bibliography.* *"Trial of Lucretia Chapman, otherwise called Lucretia Espos Y Mina, who was jointly indicted with Lino Amalia Espos Y Mina, for the Murder of William Chapman, Esq., late of Andalusia, County of Bucks, Pennsylvania. Prepared for publication by William E. Du Bois, student of law. Philadelphia: Published by G. W. Mentz & Son. 1832."

*"Celebrated Trials of all Countries and Remarkable Cases of Criminal Jurisprudence. Selected by a Member of the Philadelphia Bar. Philadelphia: Jasper Harding. 1847."

*"The Life and Confession of Carolino Estrades de Mina, Executed at Doylestown, June 21, 1832, for poisoning with arsenic, William Chapman. Written by himself in the Spanish Language while under sentence of death in the jail at Doylestown, and delivered by him to the Sheriff of Bucks County with a request to have the same translated into English. Philadelphia: Robert De Silver. 1832."

*"The Confession of Mina, the Spaniard, who was executed at

Chapman, widow, "otherwise called Lucretia Espos y Mina," and Lino Amalia Espos y Mina, "otherwise called Amalia Gregoria Zanier," by mixing poison in chicken soup, with intent to kill William Chapman, and from the effects of which he died. There were three counts, in the first and second of which the woman and man were jointly charged with the murder, and in the third the man was charged with having "instigated and procured the woman to do the act." The proceedings had been adjourned at the request of the prisoners' counsel and the trial set for today.

Thomas Ross,¹⁰ Deputy Attorney General, and *William B. Reed*,¹¹ for the Commonwealth.

*David Paul Brown*¹² and *Pcter McCall*,¹³ for Lucretia Chapman.

*Samuel Rush*¹⁴ and *E. T. McDowell*,¹⁵ for Espos y Mina.

Doylestown, Penn., on the 21st June, 1832, for the murder of William Chapman, written by himself in Spanish and translated into English. Doylestown, Pa. Printed for the Publisher. 1832."

*"Mysteries of Crime, as shown in Remarkable Criminal Trials. By a Member of the Massachusetts Bar. Illustrated. Boston: Samuel Walker & Co. 1870."

⁹ FOX, JOHN. (1787-1849.) Born Philadelphia. Graduated University of Pennsylvania, 1803. Studied law with Alexander J. Dallas, and was admitted to the Bar in 1807, at Newtown, Pa. Removed to Doylestown, 1813. Deputy Attorney General, 1814, and held office for fourteen years, broken only by his service as Major in the War of 1812. Presided over the Courts of Bucks and Montgomery counties, Pa., 1830-1841. See Battle Hist. of Bucks Co., Davis Hist. of Bucks Co. (2nd ed.), Univ. of Pa. Biog. Cat. of Matric.

¹⁰ ROSS, THOMAS. Graduated Princeton, 1825, and admitted to Bar in 1829. Deputy Attorney General (now called District Attorney) of Pennsylvania and Representative for Bucks and Lehigh counties in the 31st and 32nd Congresses (1849-1853). Died in 1865. See Battle Hist. of Bucks Co.

¹¹ REED, WILLIAM BRADFORD. (1806-1886.) Born Philadelphia. Lawyer, Diplomatist, Author. Attorney General of Pennsylvania, 1838; United States Minister to China, 1858. Died in New York City.

¹² See 1 Am. St. Tr. 371.

¹³ MCCALL, PETER. (1809-1880.) Born Trenton, N. J. Became a leading lawyer of Philadelphia and was Mayor of that city in 1844. Author of "Rise and Progress of Civil Society." "History of Pennsylvania Law and Equity." Died in Philadelphia.

¹⁴ RUSH, SAMUEL. (1795-1859.) Born Philadelphia. Graduated University of Pennsylvania, 1812. A.M., 1816. Admitted to Bar,

The prisoners having been brought up and put to the bar, *Mr. Rush* addressed the Court upon the embarrassment under which he labored in consequence of his client, *Mina's*, imperfect knowledge of the English language. Although it was with considerable difficulty the indictment had been explained to the prisoner, he was prepared to waive all objections to the immediate arraignment on that ground, provided that, by pleading to the indictment at once, he did not debar himself from the right, on which it might be his duty to insist, to be tried by a jury of which one-half should be composed of foreigners (*de medietate lingue*). It was his object therefore to obtain some assurance from the Court, or from the prosecution, that an immediate plea to the indictment should not foreclose that right.

Mr. Ross, so far from taking any advantage of the kind referred to, had concluded, if the application for a jury *de medietate* should be pressed, to accede to it. Without admitting it to be the law, he was disposed to yield, from a wish to extend to the prisoner any advantage which he might suppose such a privilege would afford.

The prisoners were then arraigned, and severally pleaded *Not Guilty* to the indictment. Being asked separately how they would be tried, they answered, "By God and my country."

Mr. McDonald asked that the prisoners be tried separately, which, after argument, was granted by the Court.

Mr. Ross said they would take up the case of *Lucretia Chapman* first, and the clerk proceeded to call the jurors to the box.

The Clerk. *Lucretia Chapman*, alias *Lucretia Espos y Mina*, stand up. These good men who are now to be called are the same which shall pass between the Commonwealth and you. If you have any objections to make to them, you will make them as they are called up to be sworn, and before they are sworn; and you shall be heard. You have a right to twenty peremptory challenges, and as many more as you can show cause for.

John B. Balderson called.

Mr. Ross. We propose to ask this juror the following questions. Whether he has any conscientious scruples on the subject of capital punishment? And if so, whether those scruples would prevent him, under any circumstances, from finding a verdict of guilty of murder in the first degree?

The COURT. This is departing from the settled practice in this

1817; Clerk Philadelphia Common Council, 1819-1820; Deputy Attorney General (district attorney); Recorder of Philadelphia and presided in the Mayor's Court, 1838-1841. Died in Philadelphia. See *Battle Hist.*, of Bucks Co., Univ. of Pa. Cat., Scharf & Westcott *Hist. of Phila.* (1884), *Martin Bench and Bar of Phila.*, Brown (D. P.), *Philadelphia Bar* (1868).

¹⁵ McDOWELL, ELEAZER T. Admitted to Bar, 1822. Whig in politics and prominent in political campaigns, but declined all official positions save that of member of State Constitutional Convention. See *Battle Hist.* of Bucks Co., Wright, C. E., "Four Lawyers of the Doylestown Bar," (in Bucks Co. Hist. Coll. I, 627).

Court, and we must therefore have some reason for it. When a juror objects, spontaneously, from conscientious motives, to serving on a jury, he is excused by our practice.

Mr. Reed, Mr. McCall and Mr. Brown argued the question at length.

The COURT. The Commonwealth's counsel propose to ask the juror the following question, viz: Whether he has any conscientious scruples on the subject of capital punishment, and if so, whether those scruples would prevent him from finding a verdict of guilty of murder in the first degree, under any circumstances? *Prima facie*, every person summoned and returned upon the panel is a competent juror, but his incompetency for various reasons may be shown. If a juror is interested, or a near relation of a party, or infirm from age or sickness, he may be challenged or set aside by the Court for the latter cause without challenge. A challenge for the cause now proposed to be shown by the examination of the juror, was, I believe, first sustained in this Court in Brown's case, in the Presidency of Judge Ross. In that case, upon the juror stating his scruples, the challenge was allowed, but when it was proposed in the same case to ask other jurors the question as to their conscientious scruples, the Court would not permit it to be done. This has since been the rule practiced upon here, particularly in Rousseau's case. There the Court refused to suffer such a question as is now proposed to be put to a juror.

It is said that Leshner's case has extended the rule. It goes a step farther, perhaps, as to the means of showing the incompetency. The Supreme Court there say, "It is not material that the intimation of his (the juror's) unfitness to do justice in the case came first from himself." I agree fully in this—if it be shown to the Court by any evidence that the juror is not fit to do justice in the cause, it would be a good cause of challenge; but that is not the point now in controversy. It is, whether a juror may be compelled, by answers to interrogatories to show that he has scruples of conscience which disqualify him from serving. In the first place, I consider this point as settled in this Court by Brown's case, unless the Supreme Court have determined it differently. This has not been shown.

But, upon principle, I think it would be contrary to the principles of our government to compel a juror to show that by reason of conscientious scruples, he was disqualified from exercising an important privilege, such as that of serving upon juries. The examination for that purpose would necessarily be inquisitorial in its character, and, the right once admitted, it would be difficult to define its limits. We therefore decide that the question cannot be put.

Mr. Ross. May we prove that the juror is one of a denomination of people who do have such conscientious scruples?

The COURT. If you can show that it is a rule of faith with his society, and he is in full standing, perhaps you may; but it is not a matter of conscience in the society of Friends, as a society. Many of its members have such scruples, others have not.

Mr. Reed. Will the Court instruct the jurors that they have the right to excuse themselves from conscientious motives?

The COURT. We will not interfere. It is an exemption the juror may ask, and we will not go further.

Mr. Ross' request that he might be allowed to instruct them was also denied.

The *Juror*. I have strong doubts of the propriety of capital punishments—but have no scruples of conscience on the subject.

The COURT directed the clerk to proceed in calling jurors until two should be qualified who should act as triers of *Mr. Balderson*. This was done and *Mr. Balderson* was found, upon examination, to be indifferent, and therefore qualified. *Lewis Smedley* stated his conscientious scruples, and was excused.

Two others were tried, and having previously formed or expressed opinions as to the guilt or innocence of the prisoner, were set aside. Twenty persons were challenged peremptorily, and one for cause.

The following named persons were severally sworn or affirmed as jurors: *John B. Balderson*, *Joseph Paul*, *Henry Licey*, *John Shutt*, *Joseph Watson, Jr.*, *Henry Hartzell*, *John Palmer*, *John Yardley*, *Lewis Kinsey*, *Robert Phillips*, *Richard Leedom*, *William M. White*.

MR. ROSS, FOR THE PROSECUTION.

Mr. Ross: Gentlemen of the Jury—The Grand Inquest of the County, at the last Court of Oyer and Terminer, returned to this Court a bill of indictment charging the prisoner at the bar with the wilful, deliberate, and premeditated murder of *William Chapman*, by administering poison. To this indictment she has pleaded not guilty, and has put herself upon her God and her country for trial. You, gentlemen, constitute that country, and you have just been solemnly sworn or affirmed to decide upon her guilt or innocence according to the evidence that may be adduced before you. In fulfilling this duty, so solemn and sacred in its character, you will no doubt be governed solely by a strict regard to the public justice of the country, and the maintenance of those laws, which alone can secure us in the enjoyment of our lives, our liberty, and our property. The crime of murder has occurred so frequently in this county within the last few years, that it is calculated to awaken the fears of the community, and to render it imperiously the duty of jurors to carry into execution the laws of the Commonwealth, without regard to the consequences that may follow a verdict of conviction. Scarcely, indeed, has more than one year passed by since there was placed at this bar, upon his trial,

a brother charged with having imbrued his hands in the blood of a brother. In the same bar, and before a jury of the same county, there is now about to be placed upon her trial, a wife, charged with having been the destroyer and the murderess of her husband.

Incredible as it may appear, that a crime so heinous in its character, and evincing so much profligacy and depravity of heart, should have been perpetrated within the limits of this peaceable and moral community; nevertheless, the evidence which we shall lay before you, will irresistibly lead you to the melancholy truth, that the prisoner at the bar is guilty of the offense with which she stands indicted.

The indictment which you are about to try, contains three counts, and charges Mrs. Chapman, jointly with another, with the perpetration of this murder. She is indicted as a principal in all the counts. A principal in the first degree, is one who is the actor or absolute perpetrator of the crime. I will not now trouble you with the law relative to principals, as it will be fully detailed to you in the future progress of this case; but will proceed to disclose to you the evidence which will be offered in support of this indictment, and to which I now ask your serious and undivided attention. It appears that some time in the month of May last, about twilight, there appeared at the door of Mrs. Chapman's residence a stranger calling himself Mina, and asking permission to stay the night. Representing himself as the son of General Mina, and as being poor and friendless, in a strange land, the permission was not only granted, but he was seated at the family board and partook in other respects of the hospitality extended to him by the unfortunate husband of the prisoner at the bar. He prolonged his stay at Andalusia, where Mrs. Chapman soon contracted that ill-fated intimacy with him, which alone could have induced her to conspire against the life of her husband, and which is not only about to bring upon her own head the vengeance of the law, but must, in some measure, entail misery and disgrace upon her innocent and helpless children. The evidence will disclose such a scene of profligacy and immorality

as has been seldom witnessed in this, or indeed in any other country. Immediately after this stranger had taken up his residence in the family, Mrs. Chapman virtually divorced herself from her husband. She treated him with the greatest cruelty and indignity, and not only reproached him with the most opprobrious epithets, but repeatedly expressed a wish that he was gone. In fact, all that affection and kindness which a wife should entertain for her husband, seemed to have given place to the most deep and bitter hatred. Entertaining this dislike of her husband, it is not surprising that she should have formed an illicit intercourse with this person, who had thus introduced himself into her family. The evidence will leave no doubt upon your minds that such an intimacy had existed between them for some time previous to the death of her husband. So wanton was her conduct, and so openly and shamelessly manifested, that it attracted not only the observation of her neighbors, but of her own children and family. The maid servant left the house in consequence of the gross impropriety which she saw, and Mr. Chapman, the husband, not only ordered Mina from the house, and complained of the ill conduct of his wife, but wept bitterly over the misery and disgrace, which she was almost daily inflicting upon him. Having laid before you this testimony, we think that we shall have assigned a motive for this horrid transaction, and have satisfied you that Mrs. Chapman was possessed of no moral principle sufficient to restrain her from the commission of the dark and nefarious deed with which she stands charged.

We will endeavor to show that a conspiracy existed between these individuals to poison Mr. Chapman. Mina, on the 16th of June, was in the city of Philadelphia, and we shall be able satisfactorily to prove to you that he at that time purchased of a respectable druggist a quantity of arsenic. He stated that he was making a collection of birds, and that he wished the arsenic for the purpose of using it in their preparation; whereas the evidence will be clear and positive that he, at that time, could not have been engaged in collecting birds. The next day after his return to Andalusia, Chapman was

taken sick. This sickness, when first taken, was of so slight a character that the physician who saw him, on the 19th, did not deem it necessary to visit him again. He grew better, and on Monday, the 20th, Mrs. Chapman prepared for him some chicken soup, which she took from the kitchen to the parlor, for the purpose, as she stated, of seasoning it. When the soup was taken to the parlor, she and Mina were the only persons left in the room. We shall endeavor to prove to you by the declarations of Mina, that Mrs. Chapman at that time took the poison and mixed it with the soup. It was taken to Mr. Chapman during the morning, and he took a small quantity of it; the remainder was thrown into the yard. In the evening of the same day, the chicken of which the soup had been made, was taken up to him, and a very small portion was eaten; the remainder of this also was thrown into the yard. The next day, the ducks of a neighbor, which had been in the yard where the chicken was thrown, died in a very sudden, and at the time in a very unaccountable manner. Immediately after taking the soup he grew worse, and complained of a burning heat in the stomach. He said that something appeared like fire in his stomach, and that it was the seat of all his misery and pain. In fact, every symptom of his disease indicated that arsenic had been administered to him. On Monday evening he was visited by a friend, who found him in a great deal of pain, and suffering for the want of attention. He made a particular request, that this person would remain with him that evening and take care of him, as his wife neglected to pay him any attention. This friend stayed with him, as requested, until nearly 11 o'clock, when Mrs. Chapman came into the room and requested him to retire. He, however, before he retired from the room, requested her to send for a physician. She declined doing so. He again earnestly besought her to permit him to go for a physician, but she persisted in refusing, although her husband was then so ill that it was doubtful whether he could survive till morning. No physician was sent for until a very late hour on Tuesday evening, when Dr. Knight was called in. Mrs. Chapman, however, refused to administer

his prescriptions, notwithstanding she was particularly enjoined to do so by the physician himself. He lingered until the morning of the 23rd, when he expired; and on the 5th of July following, she married the individual with whom, it is supposed, she conspired against the life of her husband. Three months after his decease, circumstances having occurred which induced a suspicion that he was poisoned, the body was disinterred, and a chemical analysis made of the stomach by two distinguished chemists of Philadelphia. In the opinion of these chemists, as well as in the opinion of the experienced anatomists who examined the body, the death of Mr. Chapman was occasioned by the administration of arsenic, and not by cholera morbus as had been alleged.

In addition to this testimony, we shall also lay before you a letter of Mrs. Chapman, in which certain expressions are used, which will leave but little doubt upon your mind, that they have reference to the crime of which she now stands indicted. Her conduct in various respects, furnishes, when taken in connection with the other circumstances of the case, very strong presumptive evidence of her guilt. Such for instance, as assigning different reasons to different individuals, when interrogated, as to the cause of her husband's death; treating him with so much cruelty and neglect during his sickness, as induced him to complain to the rest of his family, that he believed his wife wished him gone; and finally flying from the country upon the first intimation that she was suspected. These circumstances will all be proved to you, and will, I have no doubt, be sufficient, independent of the positive testimony, to enable you to render a verdict of guilty.

The case does indeed afford another striking proof of the truth of the line, that "blood, though it sleep a time, yet never dies."

THE EVIDENCE FOR THE PROSECUTION.

February 15.

Mary Palethorpe. Am 12 years of age; lived last May at Mrs. Chapman's. A person came there

about dusk; said his father was Governor of California; called himself Lino Amalia Espos y

Mina. He asked to stay all night. They took him down to eat with us. Could not understand distinctly what he said; Mrs. Chapman appeared to understand him best. He was lodged in a nice room, and had a feather bed; not in the garret, but like a garret; he said he came from Santa Fe de Bogota; that his father sent him to France with a doctor; the doctor died in church with a fit; he said the people of France came and took his trunk which had a good deal of money in and the man's, too; and told him he was only the man's servant. Next day Mrs. C. and Mr. Ash went up to Bonaparte's with him; there was no change made in his dress the next morning after he came; was away about a week from Mrs. C.'s; Mina was there when I returned; could not say there was any change in his appearance; saw Mina and Mrs. C. together often. Mina used to have fits; when he had them we would all be in the room; when they were going off we were all sent out of the room except Mrs. C.; she stayed in; did not think he had fits at all; sometimes he would lie still; sometimes not; he would get up and walk about after he had a fit; I have known Mina and Mrs. Chapman go into a room together and shut the door; don't think she treated her husband right; she called him a fool one Sunday as we were going to church; this was after Mina had come there; there was a difficulty between them in consequence of his neglecting to call the people to breakfast; she told him to call them to breakfast and he did not go right away; we were going to have prayers; because he did not go she said she would not have prayers, and

they sat down; she took the prayer book and locked it up; think we had prayers afterwards, but none that day. The person in the bar is Mina. They rode together more than once, sometimes a long, and sometimes a short time; sometimes alone and sometimes with other persons; when Mina came to the house he spoke bad English; could not understand all he said; Mrs. C. conversed principally with him. Mr. and Mrs. C. had a difference about the horse and carriage; Mina wanted to go to town; Mr. C. said he should not have the horse and carriage; Mrs. C. said he should; think he did go; Mr. Bishop went with him; I attended Mr. Chapman's school; Mr. Bishop came there to be cured of stammering; said he came from Vermont; do not know where he is now; there were five scholars—Mr. Cruiser, Foreman, Ash, Fassit, and myself; never heard Mrs. C. make use of any cross language to Mina.

Cross-examined. Mrs. C. had the chief management of the school. I had been there about two weeks when Mina came; Mr. Foreman went to the door when Mina knocked; told Mr. Chapman there was somebody there wanted to see him; Mr. C. told him to come into the room. Foreman brought him in; Mina asked for a night's lodging; Mrs. C. replied she thought he could stay there all night; Mina said they had refused him lodging at the tavern below. Mr. C. said there was a tavern above. Mina said he came from Philadelphia that day, and was going to Bonaparte's for money; think he said he had been very ill; don't remember his saying he had been

subject to fits; he said he had been cupped; was present again that evening when they were together; don't think Mr. C. showed much interest in him after he told his story; Mr. C. did not refuse him permission to remain; no wayfaring strangers stopped there while I was there; there was no room in the house called the beggar's room; Mr. Ash drove the carriage to Bonaparte's; don't know of Mr. C.'s objecting to their going; recollect Mr. C. writing letters to Mina's relations—his father and mother. Heard them speak of the consul. Mrs. C. accompanied Mina to town when he took some of the letters; they said they went to the consul's (Col. Cuesta). Mrs. C. said Mina dined at the consul's; do not remember that she said she understood at the consul's that Mina was a distinguished man in his own country; observed a change in his dress while he was at Mr. Chapman's; he had a new suit of clothes; the first suit was brown; do not remember Mr. Chapman ordering him a suit of clothes; remember his getting a suit of black; he said his sister had died.

Ellen Shaw. Lived at Mr. Chapman's. Mina came in the evening, and asked for victuals and lodging; was milking when he came—the dog met him and I called the dog away; he then came in and was going to the kitchen; told him he could not get in there, and he had better go on the piazza; he knocked at the door and asked Mr. Chapman if he could stay there all night. Mr. C. advised him to go to the tavern; Mrs. Chapman took him into the room and got to talking with him; they consented to let him stay all night; next day she

concluded to let him stay a few days till he got rested.

A day or two after, he wanted to go to Bonaparte's and she went along with him in her carriage; after they came back she said she had concluded to let him stay three years; she was going to teach him English, and he was to give her \$2,000 a year. I told her she had better let him alone, that he was a Spaniard and a body did not know what he might do. She said he was a fine young man and she was going to take him in as her own son; that she would be a mother to him, and her children would be sisters and brothers to him. After that Mrs. C. and Mina were in the room together almost all the time; they went to town, one Monday morning; did not get back till Wednesday night. Mr. C. was dreadfully uneasy about their going away. He said he was really afraid there would be murder either on his own side or on Mina's; this was on Tuesday night. Mrs. C. gave Mina some of Mr. C.'s fine linen shirts and a suit of blue clothes; he got a black suit, but whether she gave it to him cannot say; have heard Mrs. C. tell her husband she was mistress in her own house and she would do as she pleased; they used to be together all the time; used to see them kiss each other before the death of Mr. C; left there about two weeks before he died. She used to be up in his room a good deal. Mr. C. slept in the room where he always did, after Mina came to the house. Mrs. Chapman also slept in the room where she always did. There was one night when Mina had fits, that she was up with him all night. No other person was up with him; have often seen her in

Mina's room; have seen her there in the evening and in the day time, and especially when he would have those spells; have seen her in the morning come down stairs; have seen Mrs. C. sitting on Mina's bed. No other person was in the room—Mina was lying upon the bed at the time, whether dressed or not I do not know. Mrs. C. had on her night clothes; saw her at another time in Mina's room in the day time—I went to ask her what kind of a poultice I was to make for the old gentleman's face—Mr. C. wanted me to make a poultice, and I did not know what kind to make; did not speak to her; came away from the door, and went and made a bread and milk poultice. I did not like to disturb her, as she was sitting there talking. She said nothing to me. My reason for leaving there was, there were things I did not like to see; her proceedings and Mina's I did not like; my folks were against my staying there; they heard a great deal of talk about them; went out riding with Lino and Mrs. C. to Joseph Wright's. He was lying in Mrs. C.'s lap nearly all the way, singing love songs. When we got to Wright's, they went out into the woods together and were gone for two or three hours. We returned that night. Lino had one of his spells in the carriage, and we had to change seats—I got before to drive, and he got into the back seat, where he soon got better. I drove till we got home. Mrs. C. was behind with me when we first started from Wright's. It was near dark when we started from Wright's, about seven miles from Mr. Chapman's. We had gone about a mile when he got the

spell; left Chapman's the following week; can hardly describe the spells (of Mina) he behaved so queer. They did not appear to affect his general health. He was soon over them. Mrs. C. generally attended him when he had these fits. Mrs. C. and her husband did not live upon very good terms—he complained; have heard Mrs. C. scolding him. She spoke pretty harsh sometimes, she wished he was gone from the house, and would get ready and start; she used to tell him she was ashamed of him; she said she wished to — he was gone, for she was tired of him. This was after Mina came to the house. After Mina came, observed a change in Mrs. C.'s conduct; she seemed as if she was weaned from Mr. C. and her family; one day saw Mrs. C. give her husband a push with her foot. She was very angry, but said nothing.

Cross-examined. Have had no difference with Mrs. C.; thought Mr. C. did not settle with me fairly for my wages. Mrs. C. always had the chief management of the establishment. She generally gave directions and made contracts in regard to it. Mr. C. took very little part in what was going on; don't think the want of harmony was so great before Mina came as after. Before they had words—about like other people. My business was in the kitchen chiefly, in the cellar. Mina was very dirty upon his arrival; was dressed in dark clothes. Both Mr. and Mrs. C. were benevolent and kind to those who were in that condition. We had a room called the "beggar's room," on purpose; am certain it was Mr. C. who came to the door; was standing right

before the piazza; heard Mr. C. distinctly say to him, there was a tavern he could go to. Mr. Ash or Mr. Foreman was along with Mr. Chapman. Mina told Mr. C. he had no money to pay for his lodging; think Mrs. C. met him in the entry; cannot say whether she was often engaged in instructing him in the language; they were often engaged in a private room by themselves; did not know how the \$2,000 was to be paid; have heard her say he was a distinguished man in his own country and very wealthy. He said he was a governor, and very rich, and was going to send over for diamonds; know of no objection on the part of Mr. C. to their going to Bonaparte's. Mr. Ash drove the carriage at her request. Mina thought there was a gentleman at Bonaparte's who would assist him; on their return he said that Mr. Bonaparte had company and did not come down to see him; don't remember that it was said that two Spanish gentlemen had left the Count's two days before. Mr. C. wrote letters to Mina's relatives at his first coming. Mr. C. was kind and attentive to him, but he dare do no other; heard Mr. C. say that they need not be uneasy about Mina, that he should be

taken care of as his own; think Mrs. C. wrote to his mother; have known Mrs. C. and Mina go to the city when there was no one else with them; once they went and stayed three days; heard Mr. C. ask her what he was to do for shirts if Lino had them all; wanted to go to Wright's and she offered to go. Mrs. C. asked me to go along and walk with them; sat in the room part of the time, and under the tree part of the time. They both sang love songs—he sang in broken English. In going, Mina drove, and Mrs. C. and myself sat behind. He undertook to lay his head once or twice in my lap; told him I didn't want to be troubled with such a butterfly; lived between twelve and thirteen months with Mrs. C. Religious service was performed during the chief of the time I was in the house; and much good did it do. I never knew Mr. C. to request his wife to attend on Mina—Mina did not vomit on the journey.

To the Court. She was not in the habit of singing songs. She had a piano, and played and sung hymn tunes; don't know of any improper familiarity at the time they were riding, except that he leaned against her, and she held him in her arms.

Mr. Brown asked if the prisoner might be allowed to sit by her counsel.

The COURT said she could not—an application of that kind had been refused in this Court in a former case.

Mrs. Esther Bache. Two weeks before the death of Mr. C. was at his house two days. Mrs. C. was remarkably attentive to Mina; she took me up stairs and told me that Mina was subject to fits; begged to be excused, as

she said she had to attend on him; heard their voices distinctly and heard Mrs. C. laugh. While she was in the room, requested her daughter Mary to call her, which she refused; saw Mina next about dinner time, and

there appeared to be nothing the matter with him. Later Mrs. C. came out, and I asked her how Mina was; she said his life was almost despaired of—he was no better. After dinner, Mina, Mrs. C., and the daughter Lucretia rode out till late in the evening. After they returned Mina was relating part of his history to Mrs. C. about his passage from Mexico. Mr. C. made some inquiry but received no answer, but very ill looks from Mina. Mrs. Chapman apologized, and said, Mr. C. did not understand anything, hardly, that was said. I retired to my room, and saw no more of Mina that night. Next morning Mrs. C., and Mina and the servant Shaw rode out and did not return until ten o'clock at night. Once at dinner Mrs. Chapman behaved very unkindly to her husband; he did not come as soon as she wished; she told him, that another time, if he was not there when dinner was ready he should walk off until supper. He replied that he could not at all times leave his study. I believe that was all—Mr. Fanning, Mr. Ash and her children were present and some others—whether Mina was present do not recollect.

Cross-examined. It was in the beginning of June that I went to Mr. C.'s; was employed in making a dress for Mrs. C.; was never at Mr. C.'s before, nor since. It was Mrs. C. who told me that Mina had fits; he did not. Saw nothing ailed him when he came down to dinner. When Mina was mentioning his sufferings on board the ship, Mr. C. made some inquiry in a very pleasant way, respecting his passage. Mrs. C. observed my surprise (at Mina's silence and

ill looks), and said that Don Lino did not understand anything that Mr. C. said. Mina sat at Mrs. C.'s right hand at table; the chief of their conversation was together; refused to go back to Mr. C.'s again, for I did not like the conduct of Mina and Mrs. C. towards Mr. Chapman; could hear nothing that was said when they were in the room together.

Ann Bantom. Was at Mr. Chapman's on Monday of each week washing before he was taken sick; Monday after he was taken sick went there to wash, and stayed till Tuesday night; came back again on Wednesday and stayed till Saturday night; saw Mr. C. on Monday evening and he told me he was a little better; saw him again on that afternoon and he said he was not so well. There was some soup made for him on Monday morning by Mrs. C. She made the soup and put a little salt in it in the kitchen, and told me she would take it up in the parlor and season it. I did not see them take the soup to Mr. C. I left her in the parlor and saw no more of it after that. I went to the parlor, found Mina in there, and Mrs. C. went up just before me. I saw Mr. C. on Monday afternoon, he said he did not feel so well as in the morning. He complained of a misery at his stomach—it appeared to him very much like fire; he told me if he did not get better than he was then, he could not stand it long. On Tuesday evening, Mrs. C. called me up to see Mr. C., how bad he was. She told me she knew he would not live, and asked me if I would come back the next day and stay with her. On Tuesday evening he seemed

very bad; he tried to vomit; first heard him complain of this burning heat in the stomach on Monday afternoon. Mrs. C. said the soup was intended for Mr. C. It was chicken soup; saw it when she brought it down; threw it out on the ground in the yard. The chicken was also taken up to him but he did not eat it, for it came down again; think it was taken up by Mrs. Chapman; threw the pieces out of doors into the yard, where I threw the soup. The soup was taken up in the morning, the chicken in the afternoon; saw Mina in Chapman's room at different times while I was up there; did not see Mrs. C. put any seasoning in the soup while I was in the parlor; don't recollect what Mina was doing; don't recollect how much of the soup had been eaten; saw Mrs. C. and Lino frequently together in both the back parlors. Once Mr. Lino had one of his fits in the back parlor, late in the afternoon; Mrs. C. and the children and myself were in there with him, when he came to, she told us he did not like to have any body in the room with him. She told me and the children to go out. We went—she stayed in, and shut the door and the window shutters; don't know how long she remained there. This was on Tuesday of the week Mr. Chapman was sick; have seen Mrs. C. and Mina several times alone together; have seen them alone in the evening. Mrs. C. told me that Mina was a young man of great fortune, and a young man she had taken a great liking to. She said she pitied him very much to think he had lost so much. I have seen Mrs. C. in Mina's room where he slept; it was when he had fits; have seen her standing

by him, and at the side of his bed, where he was lying.

Cross-examined. I went to Mr. C.'s to wash and iron and do the housework. She took Juliann the same time with me—Juliann was cook, and helped to do the work about the house; cooked after Wednesday; I suppose Juliann cooked before that; did not see Mrs. C. take either soup or chicken up to Mr. C. Mrs. C. put it on the table and left it there—she did not say whether Mr. C. had taken any of it or not, but said he did not want any more of it; ate none of it, nor drank any of the soup; could not tell whether any of the soup or of the chicken had been taken. On Tuesday Mrs. C. told me she did not think he would live. Mina had one or more fits on that day.

To the COURT. Don't recollect seeing Mrs. C. take the soup out of the small pot, in which it was made; do not think she cleaned the pot. I think there was rice in the soup. A whole chicken was used, but whether cut up before or after, I cannot say. Mrs. C. gave me no directions to throw the soup or the chicken away. The chicken stood on the table till tea time, and then I threw it out; threw out the soup when I washed up the dishes.

February 16.

Richard Watkinson. Reside in Philadelphia; am engaged in the tailoring business. About the 16th of May Mrs. C. called at my shop in company with Mina. Mina purchased of me a black suit of clothing. Mr. C. wrote me an order for the clothes.

Cross-examined. I have known Mr. and Mrs. C. for twelve or thirteen years, and was one of

their pupils for four or five years. So far as I know, they lived harmoniously. At the first visit, Mrs. C. came in, and said she had a young man (Mina) in her carriage, who had been very unfortunate; he had no money, having lost upwards of \$30,000 somewhere in France. A remittance was shortly expected from his father, and as soon as the consul got the remittance he would call and pay. Mina came out of the carriage to be measured. His clothes were pretty poor—he could hardly hold them up. Later I told Mrs. C. that Mina was ordering too much clothing. Told her I would not make another suit, as I thought she would be obliged to pay it; that it would be like taking the bread out of her children's mouth; told her I thought he was a great scoundrel; that I had sent my young man to the consul to inquire respecting him; the

consul said he knew nothing of him, and knew neither him nor his father, and believed him to be an imposter; told her I thought he was as great a scoundrel as ever lived. She replied, "I hope not, Mr. Watkinson." She then said I had acted perfectly right, and thanked me. She appeared to be very much hurt after I mentioned this fact. Mrs. C. was with Mina when this last suit was ordered; told them the suit was of a high price. Mina spoke in Spanish to her, upon which she said, that Mina said \$40 was quite cheap; he had often given \$50. The price was high for a light suit (for summer) and I began to open my eyes.

Elias Durand. Reside in Philadelphia, and am a druggist; have never seen Mrs. Chapman, but have seen Mina; about the middle of June Mina came to my store.

Mr. Ross, (being asked what this witness was to prove). The object now is, to prove by this witness, that at the time alluded to by him, Mina purchased from him a quantity of arsenic.

Mr. McCall. In order to bind the present defendant by the acts of Mina, a confederacy must be established; of which, there is no evidence. The parties are husband and wife. As to the first point: The cases in which the act of one person is to bind another, are where numbers constitute the essence of the offense. *Com. v. Eberle*, 3 S. & R. This not being a trial for conspiracy, but for the single offense of murder, evidence of the acts of one cannot be given to affect the other. To admit this evidence, would be to overturn the decision of the Court, that there should be several trials. As to the second point: The acts of husband and wife cannot be given in evidence against each other. *McNally*, 112. 2 *Starkie*, 708.

Mr. Reed said he considered this as strictly evidence.

The COURT. *Elias Durand* is offered by the prosecution to prove that, in June last, Mina purchased from him a quantity of arsenic. It is objected by defendant's counsel, that this is not evidence against her. Whatever would have been evidence against Mrs. Chapman on the trial, had it been joint, is evidence against her now. The severance as to trial makes no difference as to that matter.

This evidence is now offered as one of a chain of circumstances to

charge her with administering the poison; and it is clearly proper. If she is not connected with this fact by other evidence, it cannot affect her; but it is competent for the prosecution to prove it as a link in their proposed chain of evidence. The evidence is proper, too, as one fact to show a concert of action between the two defendants charged, with a view to make the acts and declarations of one, evidence against the other.

The alleged marriage between Mrs. Chapman and Mina, forms no objection to the evidence. The fact that poison was purchased by any person being a member of her household about the time of the alleged murder, would be evidence, no matter whether that person were her husband, or a stranger—indicted or not indicted.

The evidence to prove the fact of the purchase is permitted to be given; but we do not now decide that any declarations of Mina can be given for the purpose of charging Mrs. Chapman.

Elias Durand. Mina asked me in Spanish if I could speak Spanish; referred him to my assistant, Mr. Guillou, and they conversed together. Mr. Guillou told me he asked for arsenic. Two ounces, or a quarter of a pound of arsenic was given him; think I weighed it and gave it to him myself.

Alfred Guillou. Was assistant in Mr. Durand's drug store. The prisoner came in and inquired for the residence of the Mexican consul. He asked me in broken English, which induced me to speak in Spanish. About two weeks after he returned, spoke about the weather, and mentioned his being the son of the governor of California, etc; in two or three days he returned, and asked me in Spanish if we had any arsenical soap for the preparation of birds, to which I replied, that we had not, but

that we might prepare it. He said that was useless—but if we had the powder, that would answer. He asked the price by the pound—and then asked for a shilling's worth, which we gave him. He then left the store, and returned that afternoon or the next day at farthest, and asked me to write a letter for him which he would dictate in Spanish. I wrote a rough copy, and my brother Constant Guillou coming into the store, he being better acquainted with the Spanish language than I, I told Mina that he was a more proper person to do it that I was; introduced him to my brother under the name of Cuesta, and my brother said he would do it, and did so; Mina remarked that he liked my handwriting more than that of my brother, and asked me to copy his rough draft, which I did. This is the letter.

Philadelphia, June 16th, 1831.

Sir.—I take the liberty of addressing you without having the honor of your acquaintance, from the deep sense which I entertain of your noble conduct toward my friend Mr. Lino Amalio Esposimina. That gentleman has given me to understand the sincere regret he experiences at not having it in his power to accomplish your request, and impelled by obligations under which your goodness has

placed all his friends, I hasten to put myself at your disposal, and assure you that any commands you may think proper to honor me with, I will (to the fullest extent of my power) accomplish immediately.

With your kind permission, I will do myself the honor of calling upon you on Saturday or Monday afternoon next.

My mother, as well as myself, begs to be remembered to Mrs. Chapman. Est. Cuesta.

Mr. William Chapman, Esq.

The flourish under the signature was added by me at Mina's request; never saw him again until I saw him here; he wore a pair of false whiskers, and showed me how they were fastened.

Cross-examined. It was after I had written the first rough copy he told me his name was Cuesta. The Mexican consul has the same name. The arsenic was purchased in the morning the letter was written; he got either two or four ounces.

Constant Guillou. Had some conversation with Mina; he was very polite; said his mother would be very happy to see me; asked me if I had any intention at any time of going to Mexico; he would be happy to take passage in the same vessel.

Cross-examined. The letter was not written from his dictation, but from his stating the object. He said Mr. C. had obliged his friends very much—that Mr. C. was not in good cir-

cumstances, and he, through gratitude for the favors to Esposy Mina, placed himself at Mr. Chapman's disposal; read it in Spanish, and he nodded acquiescence.

Edwin B. Fanning. Was at Mr. Chapman's about the 20th of June. Monday about 9 a. m., I called to deliver some books, entitled The Family Encyclopaedia, for which he had subscribed; learned Mr. C. was ill. I went in and found him very ill; vomiting very much; complaining of pain in the chest and head; mentioned that I was going to William Hill's, principal of Lower Dublin Academy. Mr. Hill had married a niece of Mr. C. Mrs. C. requested me to say nothing of Mr. C.'s illness unless inquired of by them. I went to Mr. Hill's and returned to Mr. C.'s a little after dark; was requested by Mr. C. himself to tarry with him through the night and take care of him.

Mr. Brown objected to any evidence of what Mr. Chapman said.

Mr. Ross. We expect to prove by this witness, that Mr. Chapman said he was not attended to; that when Mina was sick, he (Chapman) was neglected.

Mr. Reed. What was said by the party injured directly after the injury received, is evidence.

Mr. Brown. The attempt is to give declarations of Mr. C. unfavorable to the character of the defendant—though not going to the main point. The neglect of Chapman is no part of the *res gesta*.

They are not declarations made *in extremis*, nor in expectation of death, in which case they are to be admitted.

Mr. Ross. We allege that these declarations were made after the poison was administered. The deceased must be conscious of his danger. Here this is proved. Ann Bantom's evidence is, that he said he could not get well. Our object is to show that she had lost all affection for her husband.

The COURT sustained the objection, deeming the evidence now offered inadmissible at this state of the cause.

Edwin B. Fanning. Stayed with Mr. Chapman until eleven o'clock. Mrs. C. came into the room twice during that time; she thanked me for my attention to him, and said she would not trouble me to remain with him through the night; then requested her permission to go myself for a physician, and she said not. Mr. C. being in great distress, I urged the matter, and was again refused. I recommended salt and water to be given to him to stop his vomiting. Mrs. C. said she would give it him. As Mrs. C. was in the room I left it for a short time, and came in again. Mrs. C. gave him medicine out of a tea cup; supposed it to be salt and water; left Mr. C.'s residence next morning between eight and ten; Mr. C. was much the same then as the night before; this was on Tuesday. I was not at Chapman's again until the Sabbath after his death. I saw Mrs. Chapman—she was cheerful. On Monday evening (my former visit) Mr. C. was not as well as in the morning; he appeared to be attempting to vomit. Heard him say, "I cannot live so." Mrs. C. said to me about cause of his illness Tuesday "You recollect that he ate heartily of beef—stale beef. He has not been well since he ate that stale beef;" had seen Mr. Chapman after he had eaten the

beef, and he complained of no illness.

Dr. John Phillips. I have been called to attend Mr. C.'s family at various times; what I did see of his case, was ten or twelve hours before his death, when he was unable to give me any history of his feelings or his sufferings; called to see him on 19th June; he had very slight symptoms of indisposition; paid him a very short visit, and advised very mild course of treatment; thought further attention from me unnecessary. On the Tuesday following heard that Mr. C. was much worse; did not visit him until the following day, as I had no intimation from the family. On Wednesday called with Dr. Brearly and was astonished to find him in *articulo mortis*; have some recollection of his symptoms. His extremities were cold and clammy—his pulse creeping, and barely perceptible—the skin upon his extremities appeared to be collapsed, or shrunken—his hearing entirely gone; his countenance evinced a good deal of anxiety, and he seemed desirous to know whether he should or should not recover. I could not make him sensible of what my opinion was; procured a slate, but could not make him understand by writing; This was while remaining with him during the night. There was

a discharge per annum, of sanies or bloody serum, involuntary. I laid down during the course of the night, desiring to be called, if any alteration should occur; came in some time before his death, which occurred about five o'clock, a. m. He appeared calm an hour or two before and expired in rather a comatose state. Mrs. C. was in the room—Mina, I think, was also; cannot say how often or how long; took his disease on Sunday to be a mild attack of *chelera morbus*; do not know that I received it from anything said by any of the family; do not recollect that he was vomiting. On Wednesday asked Mrs. C. respecting his disease; asked her what had been his former habits and diseases. She said he had been subject to occasional attacks of vertigo; that he had once fallen down with what were supposed to be apoplectic symptoms; was not satisfied then as to the cause of his death, and am not yet.

Cross-examined. Have no recollection of being there Tuesday. Mr. C. said a beefsteak would do him more good than anything else; last time I prescribed stimulant applications, as he seemed to be sinking rapidly; saw no want of tenderness on the part of Mrs. C.; she left the room on Wednesday night at my request; I brought her and the children into the room as his dissolution approached; there was nothing at that time in her conduct unbecoming a wife.

To the COURT. Was very much at a loss to account for his death; have no personal experience of poisoning by arsenic. If arsenic had been administered it would have accounted for some of the symptoms; am not prepared to

say it would not account for all; do not say that natural causes and natural disease might not produce the same symptoms. No symptoms can give any stronger evidence of poison than probability. Mr. C. was a corpulent, short man—not robust. His symptoms were much those of Russian cholera or a violent case of common cholera.

February 17.

Dr. Allen Knight. On Tuesday, 21st June, went to see Mr. Chapman; found him very ill; a burning sensation in his stomach; vomiting and purging. His extremities were cold as high as his knees, his mouth dry, with thirst; ordered calomel in small doses. The calomel was objected to by Mrs. C. and Mr. C. I returned next morning, and found Mr. C. worse. He was entirely deaf; also delirious; a symptom which I did not perceive before; ordered mustard plasters to his feet and hands. He got worse from that time until he died; found Mrs. Chapman in the room; never saw a case exactly like his before death; the skin was colored in different parts, under his eyes particularly, and under his ears. I saw no part of the body except the face—it was dark. On Tuesday evening he had no fever—his pulse was small. Fever does not universally follow cholera morbus; have seen cholera without fever. Mrs. Chapman did not attribute any cause for his disease in his presence; she objected to the calomel.

Cross-examined. There was medicine sent for by my direction on Wednesday—laudanum; I do not know what else; prepared the calomel; did not see it

given; have no reason to say why they did not give it; cholera morbus was not frequent in our neighborhood; did not hear him complain of his head; did not examine what he cast up; do not know that he was salivated; ordered him five or six doses of calomel on my first visit. Ice and vinegar were applied to his head. He had complained very much of his head; do not believe he had a disease of the heart. Mrs. C. absented herself more on Wednesday than I thought right; do not remember her saying she had no servant; saw a colored woman there that evening. Wednesday evening Mrs. Chapman asked me if it would not be proper to inform him how near he was to his end; cannot account for his death; do not know that medicine had any effect on him; cannot account for the spots below his eyes. Mr. Chapman's habit and make of body was of an apoplectic character; his symptoms were not apoplectic; apoplexy was not the cause of death.

Benjamin Boucher. Was called between the hours of nine and eleven the night Mr. C. died. When I went in they were getting supper. Mrs. C. took a candle and lighted me up to where he lay. He seemed uneasy. Mr. Bishop was standing by his bed-side. I walked round, took him by the hand, and asked him how he felt; he gave my hand a squeeze, but did not speak. Mrs. C. said he was hard of hearing. I sat down with Mr. Bishop. Mr. Bishop got something off the mantel piece for him to drink; he took some of it. Mr. Bishop said it was gruel. Mr. C. attempted to vomit, but did not discharge anything. Dr. Phillips

and Mrs. C. then came up, and Mr. Bishop went down. Mrs. C. said she was drowsy from waiting on him—and while she went for the mint bottle he got up and fell. Mrs. C. left the room, and returned in a short time with three or four glasses of lemonade; she gave one to Dr. Phillips and one to me, and Dr. Phillips said she should give the other to Mr. Chapman. She raised him up and he drank it, saying it was "fine." The salver and tumbler were handed to me, and I set them on the table. Mrs. C. said she was very tired, and would go and lie down. Dr. Knight came in before she went out. She said to me if she was wanted, to give her a call. That was a little before twelve o'clock. Dr. Phillips said he would lie down. Mr. Bishop lighted him to a room—he left orders for us to wake him. At two o'clock he was failing fast; called Mrs. C. and Mr. Bishop called the doctor. Mina was in the room where Chapman lay; he asked me if I would not lie down; lighted me up to his bed-room where I lay one hour or more. Mr. Bishop came up and said Mr. C. was dead. I went down, closed his eyes, and put a handkerchief around his jaws. They asked me to lay him out; went home and sent for David Gando; he did not come. I then laid him out. Dr. Phillips, Mr. Bishop and Mina were in the room. Mina shaved him; there was a bruise on right side; Dr. Phillips said expected it was occasioned by a fall. There was another bruise on the knee, and one on the right shoulder. All these marks on the same side. His neck was a little blue—there was a purple mark about the ears. His nails were

purpled before his death. Previous to his death, Mina took out his watch and said Mr. C.'s pulse beat 55 to a minute—after a while he said it beat 45; asked him how many beats there were in a regular pulse? He said he had studied medicine two years; said I did not think he would live to see sunrise. Mina said, "when I was sick, Mrs. C. did wait on me night and day, and pray for me." He pretended to cry; but I saw no tears. He asked me to go down and take some drink; saw a change in Mr. C.'s face after death—it became dark. The body was very stiff one hour after death; was surprised at it. There was a discharge from the body of a dark green color. My ducks had been in the habit of going to Mr. C.'s. They were there on the 21st June, between two and three; saw the ducks coming towards home; they seemed to be worried. They came in a row, one after the other; saw Mina standing by a button-wood. Before the ducks came through into the road, one of them fell over dead. The rest came through the fence where the waste water emptied, and then two fell over. Soon a boy said that another was dead, and he thought they would all die; told him to bury them; between twenty and thirty died that day and the next. They were young ducks of two different broods; it was a dry day. Four of the ducks could not get through into Mr. C.'s yard; those did not die. My wife said that fish water would kill ducks; told her I thought they had been poisoned. They were all stiff; had chickens but none of them went into his yard; believe it is not a common thing for ducks to fall over and

die; my house is 60 or 70 yards from Mr. Chapman's; heard that Mr. C. had cholera morbus; Dr. Knight said he had symptoms of that disease; my wife sold a chicken to Mrs. C. during the illness.

Mrs. Sarah Palethorpe. I stayed with Mrs. C. on the night of June 23d; the corpse—it was very offensive. I said, you and the children had better take leave of him tonight, he will not be fit tomorrow. She answered, she had seen him, she did not want to see him; asked her if I should take the children; think she said yes, but am not sure. I took the children. Next day I said there must be some person to walk with her from the carriage to the grave; asked her if she had a relative or a friend. She said, "why would not Don Lino do?" I said no. She asked me why. I said he was a stranger, and under size. She then said, "could he not walk with Mary?" (her eldest daughter); said I saw no impropriety in that. We went to the funeral. Mr. Knight walked with her. I saw Lino on the day of the funeral; had the charge of the house that day. I asked for sugar, and was referred to Lino—he had a bunch of keys—he gave me the sugar.

Mrs. Sophia Hitchbourn. Called at Mrs. C.'s after the funeral; asked her if Mr. C. did not die suddenly. She said he did; was sick only five days; died with the cholera morbus; said she did not think that he thought he was so near his end, for the doctors gave him great encouragement; said he came in from the garden; saw he was hungry; told him there was some nice smearcase on the table, and he could go and take a saucer

full of that. He did so, and ate very heartily of it. They had supper directly, and some fat pork which he was fond of, and he ate heartily of. After supper he felt very unwell at the stomach; thought he would like to take a spoonful or two of spirits; he did so, and felt better. Near ten o'clock they then retired and both went to sleep; between twelve and one he told her he felt in great distress, and wished some peppermint; she got up to get him some, it had been misplaced, and she did not find it. In the morning she sent for Dr. Phillips. He gave him something that helped him a good deal. Next day he found him much better; said he might eat some chicken soup. She had a chicken killed and made some soup and gave him a bowl full, of which he ate very heartily and went to sleep. When he awoke he told his daughter Lucretia that he wanted some of the chicken. She took the plate that had the chicken on and sent it by her daughter Lucretia; told her to tell her Pa that he might eat as much as he wanted. When the plate was brought down, he had eaten all of the chicken except the neck. He was taken worse soon after that, and vomited until he expired. Saw Mrs. C. at her house about a week after Lino had left her to go to Boston. She said nothing of him, except that he had left her without paying for his instructions; expected he would remit the money from the north. Ten or twelve days after, in the evening, Mrs. C. came to my house after I had retired to bed. She apologized for calling so late—she understood that I wished to see her, and her son did not tell

her of it until after eight o'clock. She asked if Mr. Melvaine and Mr. Reeside had called at my house that day. She asked me if I had seen anything in the papers respecting the gentleman who had been with her learning the English language—the governor's son, of Mexico. She was informed there was an advertisement of his being robbed of his pocketbook in Washington or Baltimore; told her I had not seen anything of it, but I had heard of it; asked me if I would lend her the newspapers for a week or ten days past. This was on the Thursday evening of the week preceding that on which Mrs. C. went away. On Monday morning of next week, had a conversation with her; asked me if I had seen any account in the paper of Lino; told her he was arrested in Boston on suspicion of poisoning her husband. She says, is it possible! I had never heard of it; told her I was informed she was married to him in ten days after her husband's death; asked her if she had any idea that Lino had poisoned her husband? she said she had not. She asked me if her name was in the paper; said she hoped not; told her I was surprised she could have done such an imprudent act; told her they must be facts, or they would not dare to publish them. She then acknowledged she did marry him because he was very rich, and he had a great disposition to go traveling, and it was best for her and her children's sake.

Cross-examined. Live within half a mile of the place; have been there on a visit, ten or twelve weeks; saw nothing improper in her conduct. She told me that Mina was to pay her a

large sum of money for his instruction

Mrs. Ann Smith. Desiring to place my children in a boarding school, went to Mrs. C.'s with my eldest daughter to make arrangements. A passenger informed me on the way that Mr. C. had been buried the day before; went to Mrs. C.'s house and knocked; a lady with a black dress, and white turban, with a lilac border, came to the door; asked for Mrs. C. She said, "I am Mrs. Chapman, walk in." One of her children said, "Mamma, here is Don Lino coming with two ladies." She turned and said, "A gentleman who is learning English, was kind enough to go to Philadelphia and get me help, for I am very bad off for servants." He came in (the same person who is in the box), dressed in deep black. When I got into the carriage, she observed, "that this is the carriage that was at my husband's funeral yesterday." Her manner was as if there were no trouble in the house, though she went to the parlor window and said the sun looked gloomy; took my children there four or five weeks after; found Mrs. C. in the utmost grief; was sitting with my husband in a room called the ball room, when Mrs. C. came in and asked me if I would send one of my children to a neighbor for a newspaper; said she had been troublesome for papers and would be glad if I would send. Later Mrs. C. came to my room and asked me if I would step into her chamber; found her sister (Mrs. Green) lying in bed in tears. Mrs. C. then said, "Mrs. Smith, you appear to be a good-hearted woman, I am now going

to place the same confidence in you that I would in my dear sister." I replied, "Mrs. Chapman, I hope I will not betray your confidence." She said, "Mrs. Smith, this young man of whom you have heard me speak, who has been boarding with me, I fear has turned out an imposter." She had before told me the story of his coming to their house and going to Bonaparte's and to the consuls. While there the consul's sister said, "We are much obliged to you for your attentions to this young gentleman. He is a young gentleman of very large fortune in his own country." Mrs. C. then said to me, "Mrs. Smith, I can declare to you upon holy writ, that if she had not told me this young gentleman was a gentleman of large fortune, I should not have been deceived; but she said so, and I believed it." Said her husband gave him an order on Mr. Watkinson for a new suit of clothes. He returned from Philadelphia, saying, that he understood his sister was dead, and that he wished a suit of black. In a day or two after he stated that his sister was not dead, and that he wished a suit of brown clothes. She said he asked Mr. C. to write to his father for him. Mr. C. said to him, "Lino, you know I do not understand your language—if you will write it, I will sign it." After signing it he said to him, "Lino, I have done for you what I never did for anybody in the world. It shows the confidence I have placed in you, for I have signed what I do not understand." She said she wrote a letter also. (The letters were produced and read by *Mr. Reed*.)

Andalusia, Bucks Co., Penn., May 16, 1831.

Sir.—I have the pleasure of addressing you on a subject that will doubtless be very interesting to you. On the 9th instant your son Lino Amalia Esposimina came to my house. He has a great desire to learn the English language, finding that traveling in the United States is attended with considerable difficulty without a ready knowledge of that language. He writes to you by this conveyance, and will acquaint you with his circumstances. He will continue here until he hears from you, during which time it is his intention to exert himself in acquiring such an addition to his English education as the time may admit of.

Herewith you will receive one of my publications, which will make known to you the profession in which I have been successfully engaged during the last fourteen years; should your station in life allow of your giving publicity to the cures that have been effected by me and my lady, great encouragement will be afforded to the unfortunate objects laboring under such a calamity as stuttering, stammering, or any kind of impediment of speech in your section of country. Since the time that I was so fortunate as to effect a cure on myself, I have had four hundred and eleven pupils of both sexes, and all ages and conditions in life; of that number, several have come to me from Europe, the West Indies, and great distances in the United States.

With the greatest respect, I am, Sir, your most obdt. servant,

William Chapman.

To his Excellency the Governor of the Province of California.
The care of William Taylor, Esq. American Consul, Vera Cruz.

Andalusia, Bucks Co., Penn., May 16, 1831.

Dear Madam.—Though I have not the pleasure of being personally acquainted with you, yet as kind Providence has directed your son to my house, (which I wish may be his home, till he receives intelligence from his fond parents), I am happy to inform you that it will be the pleasure of my husband and myself to treat your son as our own child, while he remains in our house, and I sincerely hope he will not soon leave us, as myself and family are already much attached to him. Though he speaks the English language but imperfectly, yet he is very intelligent, and has given us interesting accounts of his family in the English language. His manners are so mild and engaging, that he wins the affections of every one in our house, even our youngest child (a little boy three years old) is delighted to remain by him while taking our meals at the table. He has commenced studying the English language under my direction; and I shall be well pleased if his improvement should be such as to induce him to encourage others from California and Mexico to patronize me by sending their daughters to be educated by me in English. Your son talks of spending three years in my house, which I hope

he will do; and if he does, you may rest assured, Madam, that parental attentions shall be extended to him by myself and husband. With much respect to your husband and family, I subscribe myself, dear Madam, your sincere friend.

Lucretia Chapman.

Care Mr. William Taylor, American Consul, Vera Cruz.

Mrs. Smith. She said her husband had eaten a very hearty dinner of pork; that he became extremely sick, took some brandy, which he said made him feel much better, and went to bed. In the night he awoke her saying he was ill, and asked for peppermint; she got up and gave it to him, and he became deadly sick at the stomach; next day they sent for Dr. Phillips who ordered him chicken broth; after taking this for a day or two he got much better; then said he eat some of the chicken without the broth. She dressed the fowl herself and sent it up by her daughter. When her daughter returned she found he had eaten nearly all; she went up stairs and said, "Mr. Chapman, how imprudent to eat so much!" His reply was, he had lived so long on chicken broth and the chicken tasted so palatable he could not help it. He was then taken very ill, and shortly after died. She stated that after the death of Mr. C. this man (Mina) became very attentive to the family; a few days after Mr. C.'s death he came to her and said, "Lino has one heart—Lino never forgets a favor—if you will marry me I will take you to Mexico, and my mother will never forget what you have done—she has gold mines there, and you shall share a part of them." She was surprised and said, "Lino, would it not be more proper for you to marry my daughter Mary?" He

said, "No, it is you, Mrs. Chapman, that I wish to possess—it was you that took me in your door, not knowing who I was," or something to that amount. She mentioned to him the impropriety of marrying so shortly after her husband's death. He said it would be thought nothing of in Mexico—he did not wish that it should be known here; but it would be impossible for them to travel unless they were married. He said they would go to New York and get married; he would return to her house and take care of her family and she could go on and bring her sister, Mrs. Green, who would take possession of the property while she was gone, and also take care of the school. They were accordingly married and she went on for her sister. During her absence two gentlemen whom Mina styled the Minister and one of his Secretaries, came to the house; he asked her to go to the store and get some refreshments; while she was gone Mina took a trunk of Mr. C.'s, filled it full of books and gave it to those gentlemen. The children told her that their papa's trunk was gone. Mina said he had given them a few books as a memento of Mr. C., and that the trunk would be returned again. She told him her silver spoons were gone also. He said a black woman had taken them and that he followed her to Philadelphia a few days after and accused the woman of it—

she was much confused, acknowledged it, and paid him for them in part, promising to pay the rest. I said, "Mrs. Chapman, I should not be surprised if this fellow had poisoned your husband." She gave a sigh and said, "Do you think so, my dear—those gentlemen intimated the same thing." I asked what gentlemen. She said, Mr. McIlvaine. Mr. Blayney and Mr. Reeside. I said I was much shocked to hear it. Her reply was that "hearsay was no witness."

A few days after, one of my children remarked that she thought Mrs. C. was going away, she was getting her riding dress brushed up. Mrs. C. was sitting, sewing, in her chamber, preparing to go; she observed to me that she was going a little way to sell some books; she was badly off for money, and she was going to take her daughter Mary with her, in order to save her feelings. My reply was, "Mrs. Chapman, don't you think you are wrong to go at this time, it looks like running off." She seemed hurt and said, "No, ma'am, my object is to sell some books and get money." Believe she went away that morning.

Mrs. C. told me that Mina once asked her for her watch. She told him he had Mr. C.'s already. He said he wished to have her watch as a memento of regard. He then took a chain and presented it to her, saying, "this is a chain that a friend of mine gave me. I give it to you in return for the watch—when I come back you shall have it." He went away, taking all the money in the house, even to a little that her sister had. She first wore the chain round her neck, but it irritated her skin very much. She

went up stairs and found on the mantel a bill for himself and two females. Got alarmed and went to Philadelphia and discovered the chain was nothing but brass. In the midst of her talk with Mrs. Green he came in. She said, "Lino, leave me." He replied, "What is the matter? if an angel from Heaven had come and told me a wife of mine would behave so, I would not have believed it." She said, "Lino, the chain you gave me is not gold." He replied, "If your affections are so slender as a chain, I can explain that to you. When I gave you the chain I told you a friend had given it me—that friend might have deceived me, or might have been deceived himself." As to the note from the City Hotel for the two females, he stated that whilst he was in Philadelphia a shower of rain came on and he ran under the arcade for protection. While he was there, two ladies of distinction came and asked him if he had an umbrella; he said no, he was under there for protection himself; he remained there a little while with them and then took them to the City Hotel; which accounted for the bill. She said, "Lino, my sister is not at all satisfied with this conduct." Said he, "We had better be separated, then—I find I have more wives than one to please." Mrs. C. replied, the sooner the better. He then said, "Remember, Mrs. Chapman, before we go, I must tell you something." She asked what it was. He said, "I cannot tell you in the presence of your sister. If you will come in the other room I will tell you." She went into the room with him and returned to her sister saying, "Sister, Lino is not an impostor,

he is a clever fellow." I asked Mrs. Chapman what it was that he told her; she said, "Well, ma'am, that's of no consequence, it was something between ourselves."

Cross-examined. She said she went to the consul with Lino and

her little son William. The consul asked them all to dine, but she declined and went to Mrs. Lebrun's and dined there; returned and found Lino drinking wine; she took him home in the carriage with her.

The following letters were read by *Mr. Ross*:

Albany, July 5, 1831.

My Dear Leno,

Very pleasant are the sensations which vibrate through my soul when thus addressing you ("My dear Leno") for the first time to call you mine! and till death shall separate us! how pleasing, how delightful! and you, dearest Leno, so young, so fond, so noble, and so truly grateful to your Lucretia! my soul would gladly dwell upon you till the time for writing would pass away.

The stage is to be ready to leave here at half past ten this evening, so I have but half an hour to say all I wish to my dearest dear, as it was nearly ten o'clock when the boat arrived at Albany, and the Captain was kind enough to walk with me to the Columbian Hotel, a fine establishment, kept by Jessup and Haywood; and I would rest myself here for the night, but I recollect your particular request to return as quick as possible, which I cheerfully comply with, and for this reason have requested to leave here tonight, or else I should not be with my sister tomorrow; I shall make a short stay with her; but will write to you again while with her.

I felt very lonesome on board the boat after you left me, though I was surrounded by hundreds. The stage has come, and I must bid you good bye, though very unwillingly. Kiss all my dear children for me.

I remain yours truly, and for the first time have the pleasure of subscribing myself

Lucretia Esposimina.

Leno Amalio Esposimena, Esq., Andalusia, Bucks Co., Penn.

Syracuse, July 7, 1831—Thursday.

I have this moment left the stage, and before I even take a seat, I hasten to procure pen and ink to inform my dearly beloved husband and children of the progress of my journey. I am less fatigued than I should have thought it possible; for after writing you a very hurried letter from Albany, I took my seat at 11 o'clock in the evening, in the mail stage, expecting to have reached here last evening; but at ten o'clock last evening, found I had 50 miles more to ride; and I very well know that if my dear Leno had been with me he would not have permitted his Lucretia to have rode a second night, all night, without resting on her bed. I have not lain down one minute, either night

or day, since I took leave of you in New York, nor have I taken but one meal a day; on board the boat (Tuesday) I breakfasted, yesterday I dined, and today I have breakfast; the bell is now ringing for dinner, and I am politely invited into the dining room; but I refuse to dine, or even call upon my sister till I have taken the pleasure of writing a brief letter to my fond, to my very dear companion for life. I am at Comstock's extensive hotel, Syracuse, where the mail stage changes horses, and proceeds on its way to Buffalo. The stages from Albany to this place have not been crowded; but yesterday was a very rainy day and very bad traveling for the poor horses; and we had dull, sleepy drivers, too much so for mail drivers. I have nothing more to tell you till I have seen my sister, except I have just taken a fine glass of lemonade and a few crackers, which will serve as refreshment till I see my sister, and then I will write a little more to my dearest L. A. E.

Clay, July 8th, Friday, 11 o'clock in the morning.—I am now, dear Leno, at my kind sister's, whom I so dearly love, at a place called Clay, herself, husband, and children are in good health, and rejoice very much to see me. Yesterday after I left the Hotel at Syracuse, I called immediately on General Mann who with his lady urged me very much to spend the night with them; informing me at the same time that my sister Mrs. Green had moved from Syracuse, 10 or 15 miles into the country. I was sorry to receive this intelligence, but told Mrs. Mann that I should not sleep that night till I had seen my sister; she then (then) directed me to Mr. Sharp's, who married my sister's oldest daughter, and she with one of her brothers immediately procured a horse and carriage and drove with me to my sister's, arriving there at about 10 o'clock in the evening, finding sister and her husband in bed; after I knocked some time at the door Mr. Green arose and opened the door, I pretended to be a poor stranger, and begging for the privilege of a bed for myself and children, he went and asked his wife if she could accommodate us, but she not being very well, said she thought she could not let us stay, so her husband told me that there was a tavern not more than a mile from his house, and we had better go to it; but I told him if he would but light a candle and give me a little refreshment he would very much oblige poor travelers, and at the same time informed him and his wife (for I had taken the liberty of walking into the house and had found the bedside of my sister, though all this time no light was lit up) I inform'd them that I had not rested on a bed for two nights, and was too much fatigued to go further, after about one-half hour's begging my sister arose and her husband lit a light, which very soon inform'd them who I was; after affectionately embracing my sister and taking a good supper, Mr. Green and their children retired to bed, but sister and I did not go; we sat and talked all night; you, my dearest Leno, was our principal subject; and before sunrise we had nearly said all we were wishing, and now sister is preparing to leave here with me on Monday morning next, and according to our calculation we shall be in New York on Wednesday morning next, and so shall be at Captain M'Elroy's landing on Wednesday, at about four o'clock in the afternoon. My dear sister and family join with me in sending you and

our dear children all the love my letter will hold, so be careful, my dear, and do not spill and so lose our precious love. I have been particular to tell sister all you requested me, and (defaced) going to Syracuse this afternoon with her son and daughter, that this letter may be put into the post office there, as that is the nearest office to my sister's house. Tomorrow she will go with me to take leave of her daughter Lucretia, who is married and last Monday had a little baby. Sister says I must make haste and finish my letter to send to my "pretty little husband." My dear, I hope you will not let our children see the nonsense I have written. My very kind nephew is now waiting with his horse gear'd and snapping his whip as you do sometimes, when a little tired with waiting, so good bye, dear Leno, good bye. It seems a long time to wait till next Wednesday, before I meet the fond embrace of him who is so dear to me, as is my young General Esposimina. Once more, my dear, adieu, sais your devoted

Lucretia Esposimina.

Leno A. Esposimina, Esq., Andalusia, Bucks Co., Penn.

Philadelphia, July 18, 1831.

My Beloved Wife,—The moment I arrived I went to the house of Colonel Cuesta, there I found a letter which he had received the night before sent by my friend Casanove through one of his friends that came on here, by the said letter I am very sorry to inform you of the Deacease of my friend on Saturday about one o'clock—in that letter which was written on his Death Bed he informs me that he has left the money which I wrote to him about in the hands of his partner and at my orders, he has also left his will and the most particular part of his affaires to my charges.

In Consequence of this unforeseen accident, I am obliged to send our dear little Lucretia Home again, and it is very painfull to me to be obliged to send her back again, as I had prided myself on having the pleasure of presenting her to my friend but God has willed it otherwise, I have also taken into considation (consideration) that, I will perhaps have to make a longer stay at Baltimore than I expect not knowing any person in that place that could take such care of her as her mother I dermined (determined) to send her home again.

My Dear wife Consider my Situation since my arrival in this City the first news I get is the Death of my friend then I am obliged to be separated from you. This separation I much fear if the Lord does not aid me in my misfortunes that it will lead me to the grave.

But I pray that he will sustain in all my troubles and allow me to Return into those kind and endearing loving arms of thine. Oh! my Dear wife how is it possible that Lino could survive the loss of one so loving and so dear to his bosom should he meet with the misfortune of losing you.

Never I can I forget during this life the Repeated Kindness and favors wich I have Received at your hands as a Beloved wife.

I whould first see the sun stop its Carrier through this wide world

and be plunged in the most green or blackest gulphs that demons could invent, than have it said that I should Repay you with ingratitude.

Oh! angel of my life my return to your embraces will give you proofs of my fondness for you. Embrace our dear sister for me and those Innocent Little Creatures whom I believe love me Dearly. My Dear I have not been able to send up the Mexican Ministers servant as he has been sent by his master to Baltimore with a letter or hearing the Death of my friend Casanova, which has Deprived me of the pleasure of sending you up all that you wanted, but on his Return as I will see him in Baltimore he will go up Immediately I have not sold the Dearborne and Horse yet but I have left them in Care of a friend until my Return without incurring any expenses whatever.

I hope you and all the family will enjoy good health I Remain your invariable and constant faithful Beloved Husband

Lino Amalio Esposimina.

By the Secretary's aid of His Excellence Torrel minister to the government of Mexico.¹⁶

Andalusia, July 20, 1831.

More than an hour has passed away since I retired to my writing desk, in that part of my now solitary parlour, where I have passed so many happy hours with my kind, my sincerely beloved Lino: I have been poring over your truly affectionate letter of the 18th inst. the tears of sympathy have copiously flowed from my eyes; yes, my dear husband, most sincerely do I participate with you in all your troubles: and am ready to exclaim with the poet,

"How unsubstantial is this earthly state!
How fickle every sublunary joy:
One hour exulting midst the flowers we rove:
The next desponding tread on prickly thorns."

Oh! cruel fate! thus to have deprived my dear of the pleasure of embracing his friend before his dissolution. Dear Lino! what a series of misfortunes and disappointments await you! Your Lucretia seems almost to fear they will never cease, but with your existence. God forbid that it should be so. But what cares you are now involved in! and yet so young! the responsibility of a husband! and the duties of a father to perform! You inform me that your friend has left his will and the most particular part of his affairs to your charge, which I hope will not detain you a very long time from your Lucretia, and the "Innocent little creatures whom I do sincerely believe love you dearly." Our little daughter Lucretia bore the disappointment

¹⁶ None of the letters from Mina to Mrs. Chapman, excepting the signatures, were in his hand writing. It is only on the Spanish documents that his autograph appears.

of not going with you better than I should have thought; she was full of expressions of sympathy and pity for you on account of your losing your friend. Our dear little John comes to me and I tell him to give me a kiss to send to you which he does very readily; at the same time he asks me to give him one for you likewise.

The children are all in good health, and very often speak of you. Sister Green very much admired your very interesting, tho' melancholy letter, which I took the liberty of reading to her and our daughter Mary; they both unite with me in love to you. Dear, sweet little Abby Anne kisses me very fondly for you, and that too many times in the day, she loves you very much, tho' she is very modest and bashful in acknowledging it in your presence. She has this moment sealed twenty-seven kisses upon my lips, and wishes me to send them to you, but sais to me, dont tell any body. It is now evening and William and Fran(cis) have been to the post office, but no letter from you; which gives me much uneasiness, fearing my dearest Lino is ill, and not able to write; if I receive no letter tomorrow, I shall be driven to despair. If I had money by me, I should be almost tempted to follow you to Baltimore immediately, very well knowing the delicate state of health you are in, and how inadequate you are to bear grief or trouble at this present time.

Oh! my dear husband, how anxiously do I desire that you may enjoy health, and be able to accomplish the business, which is entrusted to you, very quick. I am almost tempted to use your own familiar expression, and say, "make haste, make haste," my fond Companion, and return to your more fond Lucretia who is very lonesome and melancholly at heart without her most dearly beloved husband at home; indeed the whole house is dull without you; the doors themselves, seem to move on their hinges with melancholly; and even Mary H. has been seen by me to cry several times since you are away. I told her yesterday morning that I should write and tell you that she was crying because that John (her beloved) had left her, this made her laugh through her tears, because I spoke of you; we all sincerely mourn your absence.

Mary H. has promised to arise with me tomorrow morning at about 3 o'clock to give this letter to the mail-stage-driver, that you may receive it the next day: And oh! my dear, do write very often as you promised you would, as I shall be very impatient.

My heart is most sincerely and affectionately devoted to you, my beloved Husband. Adieu.

"Thy name shall be to memory dear,
While sweet affection claims a dwelling here."

Again, I have the honour and pleasure of attaching my first name to that of your last name.

Lucretia Esposimina.

Those stars represent Abby Ann's kisses.
Adjnt. Lino A. Esposimina, Baltimore.

Balt—July 19, 1831.

My Dear Lucrecia

I embarked on board of the steamboat this morning from Philada. for Baltimore where I arrived in safety. In the deepest affliction for the loss of my friend and feeling most sensibly our separation I hope the Supreme Being will soon restore me to your society. My intention is to proceed to the country tomorrow afternoon, to arrange the affairs of my friend and on Saturday morning at 4 o'clock I shall be with you at home, for my melancholy will not allow me to bear the pain of your absence longer, and I have come to the determination of never absenting myself from you any more as I find your presence so necessary to my happiness, that to be without you, even for a short period is insupportable to me. Besides I am tired of Baltimore already, and am not all pleased with the city, having treated myself for the present in a boarding house which I utterly dislike. Tomorrow I am to receive the money which my friend has left for me, amounting to about 45,000\$

Embrace your sister and our children for me, and kiss them for me—and believe me to be your constant and ever-loving Husband

Lino Amalio Esposimina.

Mrs. Lucrecia Chapman.

Baltimore—

(Translation)

My Beloved Lucretia

Immediately upon my arrival in Baltimore I proceeded to transact the business of my journey. I presented to the authorities the letters which I had and also the Testament of my friend; I was so unfortunate as to find that I could not, consistently with the law be allowed to take possession of the property. In consequence of this I immediately set out for Washington to present myself to his excellency the President for the purpose of asking assistance at his hands, and I am happy to say that he has given me hopes of obtaining possession of my friend's goods. But I find it necessary to delay here some time, for my health is bad; Nevertheless, my dearest Lucretia, believe me that I shall fly with the utmost celerity to fold you in my arms, and to manifest to you the depths of distress into which I have been thrown by absence from you. Think not that I have forgotten you because I have delayed for some moments, to write to you. Think not that it was the result of any diminution of affection, no, the reason was that I could not meet with a translator. But my dearest Lucretia, I am sure that you know my sentiments & that your kind heart will suggest an excuse for apparent neglect, & that you will believe that it is my desire to remedy it.

When I left Baltimore I really thought that I should lose my senses. My soul poured forth showers of tears. I looked upon the sky that stretched itself over Pennsylvania, & I re-echoed in my heart the sweet name of Lucretia Esposimina. The green fields, the verdant forests, the sweetly singing birds, every thing softened my heart to thoughts of love & I shed tears in torrents. Dear Lucrecia, there is

neither day nor night of pleasure for me when away from you. I neither eat, drink, or sleep. All is melancholy in my soul. I fear that I shall be hurried to the grave ere I see you & fold you in one long embrace.

But no, no, dear Lucretia, I can never forget my beloved children. John remembers much of me you say in your last letter. Kiss the sweet Abiana in secret, that none may see you. From all you say in your letter of the 20th July I have shed many tears—but I live in the hope of speedily being made happy by your affectionate embraces. Embrace my children for me with all the tenderness of a devoted father—give much love to our dear sister Mrs. Green. Embrace her for me with much affection.

All the family of Col. Cuesta have been offended with me because they have discovered our secret by means of the New York Gazette or the Consul of Virginia. But with you for my portion I defy the hatred of the world—for none has done for me what you have. I am noble—I cannot so far forget my nobility as to be ungrateful to you. I know the torments which you feel for my absence, dearest Lucretia, but I know also that for me there is not one spark of happiness when from you. Yet I hope soon to set at rest the misery and inquietude of your breast. My children I never for a moment forget. I have for each of them a rare present. Give to Abian in secret eight thousand three hundred kisses—to little John & the rest an equal portion & for you—receive the heart of your most faithful and invariable friend, husband and brother and devoted slave.

(No signature.)

The translator of the above cannot close his duties without expressing the hope of one day beholding a lady capable of inspiring such ardent affection as that betrayed by the forgoing letter—indeed he almost regrets having undertaken so dangerous a task, he fears that he has already received by contagion the passion expressed by the writer of this letter. He mentions this in hopes that the lady will find in it an excuse for the tremulous motion of his hand in writing the translation. He is the lady's slave.

Para la Senorita
Lucretia Esposimina.

Washington, July 25, 1831.

Mrs. Lucretia Chapman, Bucks Co., Penn.

City of Washington 26th of July, 1831.

(Translation)

My Dear Lucretia

It is impossible to resist the burning volcano which is enkindled in my breast, which increases with my miserable absence from you. The profound grief of my soul finds a vent in the silence of the night, in the most heartrending cries, at each moment invoking the cherished name of Lucretia. Oh! cruel absence, that thus rends asunder two hearts united in the sacred ties of conjugal and fraternal affection.

Oh! my Lucretia I knew not half the love with which my heart yearns toward you, until this absence. I have now been satisfied by cruel experience that it is impossible to live disunited with you. My imagination continually finds itself fixed upon you. There is not a moment of rest for me. And more, when I remember the devoted affection of your heart I scarcely survive.

I have indeed now, double cause of love for you, since you have neither father nor mother, nor sister nor brother, nor husband except me, in this land of strangers. As often as I remember your caresses my heart is afflicted. The sun is darkened my eyes. My blood is frozen with the most withering ice, and my eyes pour forth at every moment the most soul shed tears. Oh! my dear Lucretia! my loved companion, how shall I possibly exist, if I do not speedily enfold you in my arms. Trust me I shall soon be reunited to you, if heaven should permit me to recover from some little indisposition which I have at present from the waters I drank here. The lady of the house has been kind to me in alleviating my illness. At present I cannot continue my journey; but as soon as I can possibly move off, I shall hasten to throw myself at the feet of my beloved consort.

Oh! my angel, I can never shut out from my heart our dear children—the thoughts of them continually causes me to be dissolved in tears. Kiss them and embrace them over and over for me. As to our affectionate sister Mrs. Green, give the kindest proofs of my affection in your power, and do you confide in the invariable heart of your devoted friend, brother, husband and companion (*ad libitum*—the translator could not here follow the epithets of the Senor).

Lino Amalio Esposimina.

P. S. My dear Lucretia, I recollected after I had closed my other letter (as also the translation of—several words are here erased) that I had neglected to subscribe my name.
Mrs. Lucresa Chapman, Bucks County, Pa.

Washington, July 27th, 1831.

(Translation)

My Dear Lucretia,

My increased affection makes me again take my pen, to inform you of my situation. Oh! cruel fortune! Who would believe my dear Lucretia, that one possessed of so much riches, should find himself surrounded by such miserable poverty? My misfortunes have no end, my disappointments at every step, persecute me. Surrounded by distress, by pain, by poverty, and by melancholy, what is to become of me, by dear Lucretia? I will bury myself in a profound silence, which will be suited to my unhappy soul. Oh! what misfortunes, so irremediable, what absence, so rigorous, from a beloved father, from cherished wife and a fond sister! The martyrdom of Toledo was nothing when compared to mine! How shall I find consolation to sustain my life, dearest Lucretia? Picture to thyself, my love, thy companion in a strange city, without money and without friends! But all will be happiness for me, if I can again press

you to my heart. Oh! my Lucretia, the groans of my heart are re-echoed in the neighbouring fields and mountains of the city! And the only consolation which I meet with here is that which is ministered to me by a young gentleman of this city (of nineteen years) and his amiable mother, Mrs. ———. Consider my angel, that I am more than crazy! Without having the means of rejoining you in the State of Pennsylvania to fold you again in my arms. I shall, however, most speedily, when I am enabled to do so, return to your embraces. Oh! my dear Lucretia! my pain is insupportable—my grief is fast hurrying me to the grave, and my eyes continually shed tears, when I consider that thou art the only companion I have in this strange land. But as soon as Heaven permits me, I will hasten to your tender caresses.

Embrace our dear sister Mrs. Green! and those innocent children of ours, and receive the heart of thy brother, thy husband, thy friend and thy invariable, who longs to see thee.

Lino Amalio Esposymina.

Mrs. Lucretia Chapman, Bucks Co., Penn.

Washington City, July 28th, 1831.

(Translation)

My Beloved Lucretia,

There is no consolation for a miserable unfortunate like myself, but to communicate his distresses to his amiable companion. It seems to me, dear Lucretia, that Heaven could not prepare for me greater miseries than have already befallen me. Now I have no more consolation than to hurry myself to your society, as a remedy for all evil. Think not that thy beloved companion forgets thee for a single moment. No—at every instant I feel you in my heart—as often as I remember you I bathe myself in floods of tears. I am dying of grief—the very warbling of the birds, is to me a sound of lament—the sun afflicts me with his rays—the moon herself and all the bright stars present to me no other idea than that of my dearest Lucretia. But now, my beloved, what most torments is the worst of evils—not having received a letter from you for so many days. How hast thou forgotten thy once beloved companion! You have added fresh torment by your neglect to write to me—if you do this to murder me, I suffer for you and I suffer willingly all the misery you can heap upon me. My dearest Lucretia, yesterday at eight o'clock of the evening, I walked the third time to visit the President of the United States, in company with a Duke of England—I promised speedily to present to him, my beloved Lucretia, he has expressed great desire to see you. Mrs. ———, a friend of mine here, as also her son, are very anxious to become acquainted with you.

Remember me affectionately to all our beloved family, and receive the heart of thy devoted companion who desires to see thee again.

Lino Amalio Esposymina.

Endorsed, To Mrs. Lucretia Chapman, Buckus Co., Penn.

Andalusia, July 31st, 1831.

Sunday afternoon.

Lino.—Your letters of the 19th and 28th inst. are both now before me, both of which, together with yours of the 18th, have been carefully perused and reperused by me this day. Your letter of the 19th written at Baltimore on Tuesday evening was not received by me until Friday following; when my anxiety was so great for you, fearing you were sick, that I arose, and though I was without a cent of money in my house (in consequence of having bestowed my all on you), at 3 o'clock in the morning, and took a seat in the mail coach, with an intention of following you to Baltimore, if I did not find a letter from you in the City; but what was my astonishment, Lino, when I called at the house of your Consul and was told that you had not been there for a long time, that they had heard nothing of your friend's death, and that your Consul with his sisters had gone to the falls of Niagara, instead of being at New Orleans, as you had informed me your Consul and Minister both were; I then made inquiry at the United States Hotel, and at Mr. Le Brun's, and then I called on Mr. Watkinson, who told me that your Consul had informed him that he believed you to be an imposter! I was thunderstruck at this information; and told Mr. Watkinson that I could not believe you were capable of so much ingratitude, as not to return to reward me, who had ever been a sincere friend to you; the truth of this assertion I believe you cannot doubt; when you reflect but for a moment that when you were destitute, I took pity on you, and gave you a home, fed you, clothed you, and nursed you when you were sick, etc., etc. If I have been sincere why has Lino been induced to practice so much deception on Lucretia? Why not keep your appointment and return to me the same week you left, on Saturday at 4 o'clock, as you promised? But too well you knew your own guilt! You never intended to return to me. I thank you, Lino, and I thank my God, for having returned my dear innocent child Lucretia to me in safety; for as you have been permitted to practice so extensive a robbery on me, I feel thankful that my children are spared to me; and perhaps may yet prove a blessing to me; though you, Lino, are the cause of my enduring much misery at this present time; yes, my heart is pained with the crimes you have committed; think, Lino (and if your heart is not of adamant), I believe if you reflect but for a moment on the cruelties you have practiced on me and on my dear daughter Mary, your heart will bleed with mine! I have now no husband to aid me in supplying the wants of my dear innocents. Ah! Lino! do not extend your cruelties so far as to deprive me of everything which might be sold to aid in supplying my dear children with food and clothing! Tell me in your next letter where I may find my horse and Dearborn, if you really have not sold them, but "have left with a friend till you return;" as you informed me in your first letter; but if you have sold my horse and carriage, gold and silver watches, breast pins, finger rings, medals, musical box, silver bells with whistle and cake basket, etc., etc., and do not intend to send me any money as you promised to do, to relieve my distress, or need of money, I say, if you do not intend I shall ever pos-

sess any of the property you have deprived me of, than (then) I must tell you that I wish you would never write to me again, and do not request others with whom you correspond, to direct their letters to you here, and to my care, as you will find I have forwarded one to you by enclosing it in this of mine. But as you have forsaken me, do not torment me by sending any more of your letters, filled as they are with fair words and pretended affection. By this time I suppose my rings decorate the fingers of one, whom, perhaps you do love sincerely; and the worst wish that Lucretia sends after you, is, that you may be happy. You say in your last letter that "as often as you remember me, you bathe yourself in floods of tears" and that "you are dying of grief" etc. I cannot think you indulge in grief if you are in possession of the \$45,000 which you wrote me you expected to receive; and then you visit the President frequently, and have the honor of walking with a Duke of England; all this must surely make you happy, without your sending even a wish or a thought after me! And then, I observe you speak of a female friend ———, who perhaps, now receives your fondest caresses, and perhaps renders you perfectly happy. But no, Lino, when I pause for a moment, I am constrained to acknowledge that I do not believe that God will permit either you or me to be happy this side of the grave. I now bid you a long farewell.

Lucretia.

Mrs. Palethworp very much surprised me with the intelligence which she gave me of you visiting her, etc., while I was at New York.

Jacob the waiter boy called at my house day before yesterday, the news he told me did not correspond with what I had heard from you.

How is it possible that Lino can be happy? when he has taken so much pains to render his best of friends completely miserable. I think if you saw me wringing my hands and crying as I do every day your heart would really ache likewise! but you are with your friends, and I presume taking pleasure. Farewell, a long farewell. Dn. Lino A. Esposimina, Washington City.

Enclosed in the above letter was the following bill:

Mr. Amalio

To B. Renshaw,

1831.

July 8 to 9,	Board for self and 2 Ladies	\$3 00
	Use of a private parlour,	1 00
		<u>\$4 00</u>

Rec'd payment per Wm. Rhoads.

I find you have no want for a plenty of ladies if you only had a plenty of money. Adieu.

Lucretia.

This you left instead of a dagger to pierce me to the heart. You told me that when you stayed all night in town you were at the Minister's apartments without expense, and that the Minister's daughter and the Consul's sister were your company; this bill gives me a different opinion; however, I will not reprove you, Lino, do what you think will make you happy. Adieu.

Lucretia.

I wish you would observe God's commands.

Joseph McIlvaine. Am Recorder of Philadelphia. In the latter end of August last, Mr. Blayne placed in my hands the letter of 31st July, 1831, which he had received from Washington, as a part of the evidence that Lino was an imposter; thought that the conduct of Lino ought to be inquired into, and accordingly went, to Mrs. Chapman's residence with Mr. Blayne and Mr. Reeside. We waited until her return from church; introduced the subject by saying that I had understood that a person calling himself Mina, had spent some time in her house; that I had satisfactory evidence that he was a swindler and imposter; that it had become my duty to have him arrested, and that I had reason to believe that she had suffered from his impositions, and I wanted to know what he had done. She said she could not believe he was an imposter; that he represented and she believed, that he was the son of a distinguished Mexican. Asked her if he had not injured her or plundered her of her property? She said, No, promptly. Having in my possession the letter last read to the jury, naming various articles, asked her if he had not taken from her a horse and wagon. She said, yes, but that his excuse was that he had left them at a house in Twelfth street; then mentioned the spoons to her. She then gave me the same account of them as related by Mrs. Smith; named all the articles, and she admitted that he had carried them away. About this time Mrs. Green came in. I said to Mrs. C. that I could convince her that this man was an imposter; asked her if she knew what money he had when

he left Bucks to go to Baltimore. She said, about fifteen dollars; asked her if it was possible he could have had \$500 of the notes of the Farmers' Bank of Bucks County. She said it was impossible he could have had it; told her I had his advertisement of having lost that sum in notes upon that bank, and that he had used that advertisement for the purpose of defrauding several persons in Washington, and it was therefore my duty to see that he was arrested; then asked her if she could not tell me where he had gone when he left her house last. She and Mrs. Green said he had told them he was going to the north. I then told her I had a very strong impression that Mr. Chapman had died by poison, and that Lino had administered it to him. There was a marked effect on her countenance when I mentioned this; asked her if nothing had occurred to make her suspect the same thing; could see that she made a great effort to recover herself. She answered, No—she had seen nothing of the kind—that Lino had been Mr. Chapman's kind nurse during his illness, and had given him a great part of the medicine he took; told me of the great attachment Mr. C. felt to this man; said she could produce me letters that would establish that point. She spoke of the symptoms which attended her husband's death; said they were talking together when he complained of violent pain and asked for brandy, which she gave him; he seemed to be relieved till bed time, and went to bed and slept soundly; he awoke in the night, sick, and she arose to get the peppermint, but could not find it. From that time he

was exceedingly ill, and had symptoms of cholera morbus all night, and Dr. Phillips came the following morning; said that these symptoms of cholera morbus continued until his death. She seemed desirous to convince me that the attentions paid Lino were with the approbation of Mr. C. She produced copies of letters from Mr. C. to the father of Mina; told me of a conversation that she and Mr. C. had had, a day or two after Mina's arrival there; at which they talked the whole subject over and had come to the conclusion that the reception of Mina into their house had been a fortunate event for them in a pecuniary point of view, while at the same time it had enabled them to do an act of kindness to a friendless man. I brought her back to the fact that this man was an imposter; again mentioned something of the business at Washington. She expressed surprise that Mina had been so much of his time in Washington. She said she supposed from his account, that during his absence he had been to New Orleans and back. She said that when he had returned and told her he had been to New Orleans, he told her he had gone all the way on a railroad, and had traveled night and day at the rate of 30 miles an hour. I told her there was no railroad to New Orleans, and that this was a palpable deception; urged her to inform me where he was, as I had proved to her that he was a swindler, and said it was her duty to give me that information. She denied any knowledge further than that he had gone to the North. The effect of this interview was to leave a mystery upon my mind, and I determined

to be quiet—create no disturbance in Bucks, but to arrest this man if possible and then communicate to the authorities of Bucks what information I should obtain; learned that he would be in Boston on a particular day, and took means to have him arrested. On the 10th September had an interview that morning with Mr. Campbell, her counsel, and told him I had reason to believe that Mina was then in custody in Boston. Between twelve and one o'clock Mrs. C. came to my house; said she had come to have a conversation with me on the subject of her situation; told her that Mina was in custody and that I had learned from Mr. Campbell that morning that she had been married to Mina on 5th July. She said she had come by Mr. Campbell's advice to inform me how she had been deceived and injured by Mina, and that her object was that I should advise her what she should do to protect her and her character from the consequences; told her her conduct had been imprudent; that one course was to convince the public that she had been, through this business, the victim of deception, and that she ought to show her sincerity by giving me all the means in her power to bring him to justice. She assented and I proceeded to examine her as to all details. Conversations I held with Mrs. Chapman upon this assurance, I hold to be strictly confidential which I am not at liberty to disclose a single word she then said. I purposely abstained from putting to her a single question relating to the death of Mr. C., which I thought could involve her. Whatever was said, was her voluntary communication. I

confined myself to the frauds of Mina upon her.

Mr. Brown. We waive all objections, sir.

Mr. McIlvaine. She produced a letter from Lino, dated at Brewster, Massachusetts, enclosing a draft on a man named Bitonia, which she said was a fictitious name, or at least, that the draft was of no value. Upon the receipt of this, she said, she had become satisfied he was an imposter; that she had come to town in consequence, and among the first things, she had learned the history of her horse and wagon, which he had sold. She produced several papers for me to look at. The first was a certificate from the Minister of Mexico resident at Washington, certifying that Lino and Mrs. C. were lawfully man and wife. I said, "That is in Lino's handwriting, and that seal is a forgery." The name and titles of the minister were printed at the head of the certificate. She said she knew it was in his handwriting, but he (Mina) had explained to her how it came to be so—that he had written to the minister for a certificate of this kind—the minister had answered that his secretary was absent and he was too busy to write it himself, but that such was his confidence in him (Mina) that he sent him a certificate, signed, which he might fill up for himself; told her she must give me that paper as it would enable me to detain him on a charge of forgery committed in Pennsylvania; asked her for what purpose this paper was obtained; she said she had told him after they were married, that as his health was infirm, in case of accident or death to him, she would have no means

of claiming her rights; that after repeated promises he finally produced this certificate. She expressed anxiety to obtain a divorce from Mina.

About 9 that evening she came again to my house, as she said she was too late for the stage. She asked my opinion as to the validity of a deed she had in her possession, and as to administering to the estate of her husband; told her I could not be considered as her counsel, but I would give advice to omit no formality but to administer herself. She was averse to this course; she gave me a great number of details in relation to Mina, much of which has been related by other witnesses; the story of the ladies at the United States Hotel, as related by Mrs. Smith, with some additions which make it still more improbable; such as, that, from the arcade they went to the Chestnut street theatre, from thence in a carriage to the U. S. hotel; told her it was singular she should have been deceived by such a statement. She said, his excuse for the ladies not going home, was, that their clothes had got wet in the shower and that he had been up all night with the servants of the hotel drying their clothes in order that they might go home the next morning. She told me further that after their marriage he had taken her to an apartment in the U. S. hotel which he called the Minister's room. On the following Monday received information of the arrest of Mina in Boston. On the next Saturday the first publication upon the subject in Philadelphia was made, in the National Gazette, copied from a New York paper. Mr. C. came in with her sister, Mrs. Green,

Captain Baker, and her niece, Mrs. Baker; said she had brought those persons for the purpose of giving further evidence of the frauds of Mina. Capt. and Mrs. Baker then informed me that they had just arrived from Cape Cod; that they had come on at the recommendation of Mina for the purpose of visiting their aunt; that Mina had been at Cape Cod with letters furnished by Mrs. C. to her friends there; that her friends had received him with open arms; that he had made himself very agreeable; had communicated to them his great wealth and the immense benefits he had conferred, and still intended to confer on her; that he represented that he had \$1,500,000 a year from his gold mines; that he had furnished Mrs. Chapman with six or ten thousand dollars in gold, with which she had erected the most elegant house in all that section of the country; that he intended when he received remittances, to erect a palace on the bank of the

river; that he had recommended all her relations to come on and visit her; that he had offered to them some situations on a farm adjoining that of Mrs. C., which he was going to work with slaves brought from Mexico; that to one in particular he offered the place of overseer; he paid, while there, very particular attention to a niece of Mrs. C., and that this young lady had followed him to Boston with a view to marry him; while at Cape Cod he said he had lost his pocket book, containing a large sum of money. I asked her what were the motives which induced her to pay such extraordinary attention to a stranger; she said they believed him to be a man of great wealth, that he promised them very large sums of money, and that they expected to derive great benefit from him; she produced two papers in Spanish, which were written at a time when he was sick at her house, and it was apprehended his life might be in danger.

15,00000 dollars. Be it known by these presents that I, Lino Amalio Esposimina as my last will, leave to Mrs. Lucretia Chapman the sum of Fifteen thousand dollars for having assisted me with particular attention before my death, which sum will be paid in the city of Mexico. In witness whereof I execute this at Philadelphia, May 28, 1831.

(Seal, etc.)

(Margin) This is worth \$15000.

Lino Amalio Esposimina.

Mr. M'Ilvaine. Those were executed in order that if he should die, they should be remunerated for their kindness; remarked to her that it was extraordinary that they should be deceived, when in the body of the order \$15,000 is named, and in the margin, in figures \$1,500,000; she evinced a strong desire to be

separated from Mina; told her these frauds must be the foundation of her divorce from Mina; she seemed anxious that they should be investigated. This interview was the last that I had with Mrs. C.

Cross-examined. She told me that when Lino was urging her to marry him, he said it was her

husband's dying wish; said that had operated with her. The letter of July 31st^{17a} was enclosed to the High Constable of Philadelphia, in a letter from Mr. T., in Washington city, which stated that Mina had swindled him. It was taken out of the post office by Mr. T. When sent to Philadelphia it had been opened. I did not know of the marriage when I perused that letter. Mrs. C. did not know that I was possessed of it.

To the COURT. Whilst I was telling her of the probability of Mina having poisoned her husband, her countenance became livid; there was a great heaving of the bosom; I thought she would lose herself under the agitation. She did, however, after a considerable pause, recover her self-command, and gave me the answer, "No—I have seen nothing of the sort—Mr. Lino was my husband's kind nurse during his sickness." Did not think there was an expression or appearance of surprise as I expected; was disappointed at the moment, for I had hoped for such an expression of surprise, and that she would have inquired of me what reason I had for suspecting him. The effect was unsatisfactory to me at the time. I did not know they were then married; think she said, she did not think it possible that Lino could do any thing so diabolical.

Dr. John P. Hopkinson. At the request of Mr. Ross made an examination of the body of William Chapman on the 21st of September; the odor that escaped from the coffin was not remarkably offensive; the whole of the

face was black and putrid and the linen about it somewhat stained; cut through the coverings and exposed the abdomen and part of the chest, which were of a pale white appearance. I made two incisions and exposed the cavity of the abdomen; and was struck with its firmness and resistance. No offensive odor escaped from the abdomen; the stomach appeared externally as if inflamed within, that is, it had a somewhat dark color; now requested Dr. Coates to assist me in the examination; we first examined the intestines, which we opened in many parts; were struck with the absence of any fluid in them. They were very slightly distended; seemed disposed rather to become dry than to putrify. With the single exception of a small quantity of billious-looking matter in the commencement of the large intestine, they were totally empty. Their appearance was pale, without marks of inflammation. The whole canal was examined in this general way, with the exception of the terminating portion called the rectum, which was not examined; the liver and other solid viscera presented no unhealthy appearance; we proceeded to remove the stomach; ligatures were applied, insulating it, including a portion of the commencement of the intestine; in cutting the esophagus or gullet it appeared inflamed. The parts removed were immediately placed in a glass jar, cleansed for the purpose, and it was closed by myself. I carried the jar and its contents to Philadelphia, kept them carefully in my own pos-

^{17a} See *ante*, p. 142.

session, and on the following morning placed them in the hands of Dr. Mitchell for analysis.

In the presence of Dr. Mitchell and Mr. Clemson I opened the stomach. The whole surface was covered with a dark brownish colored mucus. This was scraped off and carefully removed for a separate analysis. It presented appearances of universal inflammation, at one extremity bounded by the orifice leading into the intestine, extending to the other leading into the esophagus.

Am a practitioner of medicine and surgery, and lecture on anatomy in the University of Pennsylvania. I have had very considerable experience in dissections. The peculiarities which particularly struck me (at the examination), were, the slight degree of putrefaction in the abdominal viscera, and the limited extent of the inflammation from the stomach; when the stomach was opened, a very peculiar smell, which I compared to that of pickled herring, arose from it. Upon my mentioning this, all present confirmed it. Both the stomach and intestines, when cut, showed considerable firmness of texture; was further surprised that so little matter of any kind should be found in the canal or the stomach; have examined many hundreds of bodies and never observed such a smell before; never dissected a body of a person who died by arsenic to my knowledge.

In cases of poisoning by arsenic, the inflammation may be confined to the stomach. A person may die of arsenic, and no trace be found of it in the stomach. Cases of this kind are recorded; in cases of poisoning by arsenic

inflammation of the intestines is not an invariable symptom. In case of death from local inflammation, the part affected is most liable to putrefaction; medical opinion is divided in respect to arsenic being an antiseptic upon a living body. It is used for the purpose of preserving animals, being applied after death; from the symptoms detailed by Drs. Phillips and Knight, and from the appearance of the body I attribute the death of Mr. Chapman to the action of some violent substance on the stomach. Authorities state that inflammation of the rectum, and such discharges as sometimes attend it, are symptoms of poisoning by arsenic.

Cross-examined. Did not examine the rectum. By a violent substance (to which I attribute the death of Mr. C.) I mean a substance usually termed poison. Bile would not be considered a violent substance. It produces irritation, but I am not prepared to say that bile would produce inflammation. It is difficult to describe inflammation; impossible to explain it to one who is not a medical man. Irritation is the commencement of inflammation. Irritants are the causes of inflammation. Inflammation certainly exists after death, when caused by natural diseases. Congestion is very different from inflammation. The symptoms I heard from the medical witnesses are those of cholera morbus. Putrefaction is hastened or retarded by circumstances. Causes of retarding putrefaction may be, the dryness of the soil—the individual not having died very suddenly—and the absence of any fecal matter in the intestinal canal; never before exam-

ined a body after so long an interval from the disease; never before examined a body that had been disinterred. Absorption may go on after death. Arsenic will only preserve that with which it is in immediate contact. Applied to an animal internally, after death, it may preserve the whole. The body, except the face, was in a good general state of preservation. The inside of the coffin and the linen were dry. The ground in which the coffin was deposited, was a mixture of clay and gravel. From having read of cases of long interment, would say that the herring smell is not usual; never heard or read of the herring smell peculiarly belonging to arsenic. A violent case of the cholera morbus might present the same appearance after death as this body; the results of cholera morbus and arsenic on the stomach are difficult to distinguish. The examination of the heart is not as important as that of the stomach in examining for poison; was not apprised that Mr. Chapman labored under a disease of the heart. In so small a quantity of arsenic as would kill a man, I should not suppose the heart would show it. Four or five grains will destroy life; do not know that blood is discharged in cholera morbus; have never known a case of cholera morbus to terminate fatally, neither in my own practice, nor in that of the friends I have consulted.

To the COURT. Cholera morbus continues from a few hours to several days; never had a patient in my care to continue beyond one or two days. Cholera morbus arises from the action of irritating substances in the stomach and bowels. The seat

of the disease in this case was solely in the stomach. The inflammation might have been very violent in the rectum without showing it above; presumed that I had the cause of death in the stomach, and therefore did not make further examination than I have detailed. From the symptoms that preceded his death, should not have thought it at all necessary to examine for apoplexy. From the symptoms and the post mortem examination, have no doubt but the disease that caused his death was in the stomach; never say the dryness of the intestines in any body I ever examined before.

February 20.

Dr. Reynell Coates. Am a practitioner of medicine; was present at the disinterment of the body in the church-yard of All-Saints. When the coffin was removed from the ground, it was placed upon the ground and opened. Dr. Hopkinson opened the abdomen, and then requested my assistance in the farther examination. The examination proceeded to the abdomen only; observed previously to the body being opened, that the lid towards the head was indented, apparently by the weight of the earth, and by the action of a slight degree of moisture. The smell of the body was not fetid. The face was the only external part which presented to view during the examination which exhibited signs of putrefaction. It was very much putrified. The body externally had a clammy feel. When the abdomen was opened, we were surprised at the small quantity of moisture in it. They were almost empty, although there were observed in

them two or three small portions of fecal matter, tinged with apparently healthy bile. Those portions of the intestines which came into view, exhibited no signs of disease; think the whole extent of the small intestines was handled. One considerable incision was made—or perhaps two—into the large intestine. No signs of disease were found here, but there was present a small portion of feces apparently tinged with healthy bile. The external appearance of the stomach induced us to think that the internal coat was in a state of inflammation. The stomach, together with a portion of intestine, was tied at each extremity and removed from the body. When the esophagus or gullet was divided, we had the opportunity of seeing a small portion of the internal lining of the gullet close to the stomach. This part was in a very intense state of inflammation. The liver did not possess any marks of disease. The gall-bladder appeared to contain some bile, and had externally a healthy appearance. The spleen was soft, and in a condition not unusual where persons die of diseases of rapid progress. The kidneys appeared to be healthy; they were not dissected. The stomach and that portion of the intestine removed with it, were placed in a clean bottle by Dr. Hopkinson—the coffin was closed, and the body reinterred. Upon opening the abdomen there was a very peculiar smell; do not know that I could liken it to anything precisely; never perceived it in opening any other body; have been present at the examination of two bodies said to have died by arsenic. All the appearances in this body were in

accordance with a certain class of cases of poisoning by arsenic. The bloody serum spoken of by Dr. Phillips, the inflammation of the gullet, and the absence of the inflammation of the intestines, as the question is general, would not be evidence of poison by arsenic. Inflammation of the rectum is one of the symptoms of poisoning by arsenic. A man may die by arsenic, and from vomiting and purging, no trace of it afterwards be found. In cholera morbus there are generally some marks of inflammation about the small intestines. From the nature of these there may probably be some marks in the stomach, though probably not very intense; have heard, however, of cases of cholera, in which the inflammation of the stomach was intense. In natural death, the diseased part is considered most liable to putrefaction; think it would always be so, unless the death were instantaneous, or nearly so. This answer is applicable to cases of death by accident. In all cases of local inflammation, the diseased part is most liable to putrefaction. Arsenic is not agreed to be an antiseptic even in a dead subject. My own opinion is, that it is an antiseptic. From what I saw, and from the evidence of Drs. Phillips, Knight and Hopkinson, I am of opinion that Mr. Chapman died by the action of some corrosive poison or irritant poison, probably of an arsenical character. The ordinary symptoms of disease occasioned by arsenic are, first, of sickness at the stomach, accompanied by an uneasy feeling in that part; soon pain in the stomach, accompanied by an acrid feeling in the mouth, being the commencing symptom

of inflammation about the mouth and throat; the pain in the stomach rapidly becomes very severe, and sometimes that in the throat also; the patient complains of an intense burning sensation; this burning pain generally soon reaches its height, and continues throughout the case. Vomiting is a very common symptom. The quantity of the first discharges depends on the quantity of the contents of the stomach. When the stomach is evacuated or nearly so, if the vomiting continues, bile is generally thrown up, of a healthy character. If the vomiting still continues, and that time not very long, it sinks into useless and straining efforts to vomit, without bringing up anything. In some cases there is no vomiting from the first to the last. At the time when these inflammatory symptoms begin to be severe, there is generally some irritation of the small intestines also. Sometimes this irritation also becomes very severe, and a burning sensation and pain upon pressure are extended to the whole abdomen. Very early in the case the system is found in a state of collapse; all the vital energies are very much depressed. The heart and circulation appear to suffer most. The pulse is found to be small, weak and frequent; in fatal cases it is often entirely imperceptible at the wrist; this collapse frequently continues until death, the system never reacting, and there never being a proper state of fever. The symptoms described as affecting the small intestines are often wanting in the case. Sometimes all the symptoms intermit in the progress of protracted cases, and reappear upon the second attack. Cramps in the low-

er extremities are not unfrequently present, and are often severe. Irritation about the rectum is one of the most common symptoms. All the other mucous membranes are affected. The brain and the nerves of sensation and motion are affected sometimes, though seldom.

Cross-examined. At the disinterment was not asked to be present by any one; I had heard of it, and considered it a privilege to be present; had frequently heard before that Dr. Phillips had, prior to the suspicion of poison in the case, attributed the death to cholera morbus. The physician to whom the character of a case is communicated by another, is not, everything else being equal, as well fitted to judge of it as the physician who saw it. All the symptoms described by Dr. Phillips might attend other diseases. There were none of the symptoms that would necessarily be the effect of arsenic; should never feel authorized, by any train of symptoms to say, that a man had died by arsenic. I would not feel authorized to say so, from any external appearance of the body, nor from any consistency of it. Beyond these, I observed the external appearance of the stomach, the inflammation of the gullet, and the absence of inflammation in the small intestines. I have both heard and read, and what is better, have observed conclusions proved to be correct, drawn from the external appearance of the stomach; do not regard such conclusions as absolutely positive, but only very probable. Three coats are commonly named for the stomach, the mucous, the nervous and the muscular, which is

covered by the peritoneum; could certainly know better the state of the stomach by seeing it through the peritoneum than I could know the lining of a coat from seeing the cloth outside. The inferences from the appearances in such cases could be drawn by a practiced eye alone; but such might be drawn. An opinion drawn from such appearances might be ill-founded. The color of the peritoneum was what I should call a dull ashy greyness, not uniform in all its parts, but approaching to a mottled appearance; do not think that I ever before examined a stomach taken from a body which had so long been interred. A burial shortly after death would be calculated to preserve the body. The character of the soil, material of the coffin, and absence of fluids from the body would be means of preservation. Arsenic would not be as apt to preserve the face as any other part, when applied at a distance from it. The preservative effects upon the abdomen would be stronger than upon the face in this case, because the abdomen was nearer the spot to which the arsenic was applied. If there were arsenic enough in the abdomen to preserve, there would be enough to inflame it. The parts were all in a good state of preservation. That which was inflamed was in no better preservation than the rest.

There is in all corpses, reasons for the face decaying faster than other parts; it is uncovered—and in this case there was moisture about it. It would be impossible to answer the question by what process death is produced by arsenic. In most cases, death is produced in con-

sequence of inflammation caused by it; have never formed an opinion whether arsenic destroys by absorption or not; think it probable that it does enter the blood; think arsenic would preserve parts with which it does not come in contact, and to which it could not be conveyed by any obvious process. I think the twentieth part of a grain is the smallest quantity that has been detected upon analysis; have not heard on the best authority that the 300th part of a grain has been detected. A stomach inflamed as I suppose that of Mr. C.'s to have been, might be dissolved, and no traces of arsenic be discovered; infer there was poison in this case from the joint evidence of all the circumstances. It is within possibility that all the symptoms and appearances that have been described, all the examinations that have been made and described, and all that I myself saw, might be accounted for on the supposition that the man died a natural death. I do not think it possible that any one can be certain that a man died by poison, unless the poison be found in the body. The evidence I have, of the man having died by poison, is as strong as it could be, without the arsenic being found there. Such a course of circumstances I never saw, and never heard described, as attendant upon cholera morbus, existed in this case. The cholera had fallen a good deal under my own observation in both its forms (the common cholera morbus and the epidemic Asiatic cholera), and I have never seen it run such a course and be attended before death by such morbid appearances—nor have I

seen such morbid appearances described as attending it after death; have always been convinced that medical testimony is an insufficient ground, independent of any chemical investigation, to warrant me in determining a case of life and death, were I called upon to determine the fact legally. In point of fact it is not to be relied upon.

Dr. John K. Mitchell. Am a practitioner of medicine, lecturer on chemistry, and one of the attending physicians of the Pennsylvania Hospital. On the 22d September, 1831, Dr. Hopkinson brought to my laboratory in Philadelphia, a jar containing a stomach and about six inches of the intestine nearest the stomach called the duodenum, which he told me was the stomach of Mr. Chapman. In his and Mr. Clemson's presence an examination of this stomach and intestine was made. The exterior appearance of the stomach differed very much from that of the duodenum. The duodenum was of a nearly white color, such as a healthy duodenum appears. The stomach was a dark grey, tinged with red. The smell of the whole was very peculiar, such as I had never before perceived. Upon consultation we came to the conclusion that it most resembled the smell of a dried Scotch herring. We proceeded then to open the stomach, which was tied at its upper orifice, a string being applied likewise to the other end of the intestine, so as to include the contents of the stomach. Upon laying open the stomach and intestine we found them empty, except a thin layer of matter, which was attached to the sides of the stomach. Through this adhesive mucus, we could,

in many places, perceive the color of the lining coat or the internal membrane of the stomach which appeared red. Nothing appeared remarkable in the duodenum except the pale straw yellow color of its internal surfaces. As arsenic is not very soluble in water, I passed my fingers over the whole internal lining, feeling the mucus which lined it for the purpose of ascertaining if anything gritty could there be found. We failed to discover any solid body or particle, in any part of the stomach or attached duodenum. As the stomach contained nothing, and as no particles of any sort could be discovered in it, the detection of arsenic, or of any other poison presented a probable difficulty. We thought best to scrape off from the internal walls of the stomach, the viscid mucus with which it was lined; to subject that to one method of analysis and the solid stomach and intestine to another. In the attempt to remove the mucus, which was done with a smooth-edged bone spoon, it was in some places so much attached as to bring with it the internal coat of the stomach, which appeared in some places to have been loosened from its cellular attachments to the muscular coat, by a very thin plate of what appeared to be effused blood. A little water was passed over the inner surface of the stomach after scraping, for the purpose of the better observing its condition; that water was added to the mucus which had been scraped off. Then the stomach appeared to be less regularly red and there appeared many red spots, especially around the first opening of the stomach, next the

gullet, and in various parts of the stomach could be perceived dark brown patches. None of these seemed to be the effect of putrefaction—for there was no smell indicative of that process. To the mucus and water some more clean water was added, and the whole boiled in a clean Florence flask for a considerable time—everything thus treated was then thrown upon a filter. After filtration there was left on the filter a dark brown substance, which was thrown into nitric acid (filter and all), in which the stomach and intestine were undergoing solution. The liquid which had been filtered was transparent, with a very faint amber yellow color. Very small portions of this liquid, taken separately, were subjected to liquid tests. Sulphate of copper in solution changed the color of that portion to which it was applied to an undecided grass green. Nitrate of silver in solution gave a brownish yellow flocculent precipitate, which grew darker, and soon lost its yellowishness. Sulphuretted hydrogen in its gaseous state was passed through another portion—and deepened its yellow tint perceptibly. Nearly the whole of the liquid was then subjected to the action of sulphuretted hydrogen—thrown into a capsule, heated until its yellowness became distinctly marked, and its transparency was gone. The whole liquid was then thrown upon a filter, and from necessity left for several hours. When it was again looked at, a transparent liquid was found in the vessel beneath the filter, and on the filter was discoverable a yellow substance which could not be separated from it, being in too

small quantity and the paper not being smooth. As the quantity was too small to hope to look for any decided result from heating it alone, it was thrown (filter and all) into the vessel in which the stomach and intestine were in a state of solution. Everything then which might be supposed to contain poison remained to be looked for in the nitric acid solution. That was evaporated nearly to dryness, heated again by nitric acid, and so on, until it was supposed that the animal matter was destroyed. Water was added to the residue, and boiled on it until it was supposed that everything soluble had been taken up. That liquid was filtered, evaporated to dryness, and treated with lime water. This matter was evaporated to dryness after using the lime water, and it was presumable that if any arsenic were present, it existed in the dried mass as a salt called arseniate of lime. This was divided into three portions, each placed in the closed end of a glass tube, open at the other end. The sealed end of a tube was then placed over the flame of a spirit lamp (the dried mass was mixed with powdered charcoal before being placed in the tubes), with a view to sublime metallic arsenic, if any there should be. The tube which was held by Mr. Clemson became covered on its internal surface for some distance above the material employed in the tube, with black looking matter, which an unpracticed eye might readily mistake for a metal; for although black, it was glistening. After these appearances had been observed, the sealed end cracked and opened under the action of the spirit lamp; when

Mr. Clemson, who was holding it, turned round and said, "is any one subliming arsenic in the room?" The reply was, No—and he then called me to examine what the odor of the tube was—and I distinctly recognized what I believed to be the smell of the fumes of arsenic. The tube was subsequently heated where the shining black matter had lodged and as the tube was open at both ends, a current of air was passing through it, and the arsenical smell was perceptible at the upper end. The other tubes were subsequently at different times treated in the same manner—and, with the exception of the breaking, presented similar results—a black matter covering the arsenical ring, if any was there. There was no evidence to the eye that there was any arsenic there. This is a succinct history of the proceedings in my laboratory for the detection of arsenic. Previously to entering upon the search for arsenic, some tests were used for the purpose of ascertaining whether it would be proper to search for any other poison. Corrosive sublimate and tartar emetic were thus looked for, but no indication of their presence, however slight, could be discovered. That was all that was done with Mr. C.'s stomach. As a chemist, would say that the tests used upon the liquid obtained by boiling the mucus of the stomach gave no conclusive evidence of the presence of any arsenical matter. They ought not to be regarded being negative. The arsenical odor is generally esteemed by high authority on this subject, a very imperfect test of the presence of arsenic; but as the objections to this test are several,

and as it was important for public justice that this case should be strictly examined, I tested, one by one, experimentally, the objections. The first alleges that the mixture of animal matter so covers, when it is volatilized along with arsenic, the odor of that metal, that it cannot be perceived. That objection does not apply in the case, as it was perceived. Another objection is founded upon the alleged similar odor of certain substances, phosphorus and its compounds—zinc, antimony and onions, garlic and things of that kind. Garlic or onions could not, by any possibility, have been present in the matter which was sublimed. Antimony, zinc and the phosphates, mixed with animal matter and charcoal were tested in similar tubes under like circumstances. These experiments were repeated again and again without the production of the arsenical odor, or anything that I could mistake for it, unless I actually placed arsenic in the tube.

Supposing myself liable to deception, because I knew what was actually in the tubes, I prepared a set of them containing these articles (ph. of soda, kermes mineral, and some granulated zinc); I placed them, while under treatment by the spirit lamp, and in succession, under the nose of Mr. Clemson, who was ignorant of their contents. Among these tubes one was prepared with arsenic in a very small quantity. It was only when the tube containing arsenic was heated and presented to him that he said decidedly and promptly, "That is arsenic," and did not hesitate about the others, that there was no arsenic there.

Desirous to pursue an investigation after the partial failure of this one, I placed in a stomach which was brought to me from the Alms House, a small quantity of arsenite of potash in solution^{17b}—called Fowler's solution, intending to analyze it at my leisure for the purpose of seeing how small a quantity I could separate. Other duties prevented me from attending to the analysis, and it (the stomach) remained in my laboratory for two or three months. It did not putrify in that time, and at the end of that period it had precisely the smell of the stomach of Mr. C. A smell which was new to me—and which I observed only in those two stomachs. After all these investigations, I still feel bound by the high authority of those writers who have expressed an opinion on the subject, to say, that the chemical proofs of the presence of arsenic, though amounting to a strong presumption, are not conclusive evidence of its presence.

I now, sir, state my opinion upon all the proofs. For these reasons the suddenness and the violence of the attack, in a neighborhood subject at that time to no epidemic, in a man of temperate and cautious habits, attended with the following symptoms—sickness and vomiting, a burning pain in the region of the stomach, described as being “like fire”—attended with extraordinary reduction of strength, and very unusual coldness of the extremities for a very considerable period before death, the absence of delirium, the particular character of pulse described, the parched state of the mouth, the

unusual livid spots about the face, the preternatural rigidity of the body after death, absence of swelling of the belly, the calm and nearly quiet death after so much suffering, the intellectual faculties remaining perfect nearly till death (there being no evidence that he had them not till death), the period at which death took place, are the symptoms upon which I partly found my opinion. I found no part of that opinion upon the state of the body when taken out of the ground; nor can I with a single comparative fact, with reference to the smell, permit that to form any part of the foundation of my opinion. The circumstances upon which I in part found my opinion, derived from the examination of the dead body are those peculiarities in the morbid state of the stomach which I have before noticed. The singular exemption of the intestines from disease, except the rectum, from which there was discharged matter significant of disease in that organ, which, had it passed through the intestines, would have left traces of its progress, being colored; added to these, the hitherto inconclusive chemical proofs, acquire increased strength—and I am unable, after a careful and considerate view of the whole ground, to resist the conclusion that Wm. Chapman died because of the presence of arsenic in his stomach. Think Christison is considered the best English authority on poisons. Orfila, the best French authority.

Cross-examined. Consider Berzelius as the first chemical authority in the world; do not

^{17b} Two drachms.

think that the whole of the symptoms demonstrate the presence of poison—and of course that includes the admission that any one of them does not. The bloody serum issuing per anum might have proceeded from a variety of diseases. The livid spots also; they are very usual when malignant fevers prevail—they characterize the spotted fever. After a considerable time, the rigidity of the body is of no unfrequent occurrence; think it very unusual for a body to become stiff in one hour's time. It is usual for the body to become stiffer gradually. *Ceteris paribus*, ocular observation of the symptoms is the best test for forming an opinion. In reciting symptoms, facts are stated; the opinion founded upon them is an act of judgment. Omissions of symptoms in this particular case could not alter the opinion—because the ground of the case, as regards the principles, has been traveled over. Cholera morbus is a vomiting and purging. Sometimes in indigestion there is violent vomiting—in cases of dysentery there is rarely vomiting; there are occasional discharges of bloody serum. The violent burning “like fire” never saw presented in the cholera of our own country. In that disease the intestines are found sometimes empty, and sometimes full; never saw a case in which a patient died from inanition in cholera. In epidemic cholera the symptoms are represented to be like those occasioned by irritant poisons. It is said that irritant poisons are among the causes of cholera. I attach no importance to the preservation of the body. To judge of the degree of importance, etc., it would be neces-

sary to examine bodies from that burial ground three months after interment. The exemption from inflammation of the lower intestines, I do consider important, not as standing by itself, but in connection with the disease of the stomach and rectum; believe that there is evidence of the disease of the rectum—the bloody matter which could not have come from the intestines. There are bloody discharges from piles; have heard no evidence of cholera being rife in that neighborhood. If there were, I think it would have no influence upon my opinion, unless they were malignant cases. Fowler's solution is administered as a medicine in some cases. It is arsenite of potash in solution; believe very few physicians administer it now in intermittents. If the medicines were poisonous, those symptoms would depend upon them; think calomel could not have produced them. When the disease is not very violent, the constitution of the individual modifies it very much. Diseases of a very acute character, especially when epidemic, seem to be under no sort of influence, derived from the constitution of the individual. Age and sex sometimes make a difference. Smearcase and pork, eaten at night heartily, if the person is not accustomed to them, would be very sure to hurt him.

For my friend, Dr. Hopkinson, I must make this apology: this was his first case; he was, without preparation, taken up to the place of interment and made an examination which gives us the greater part of the information which could be probably elicited for this case, by these means. He has said himself that it was an

inadequate examination. The examination of the rectum was very important—of the heart not very material—of the brain less important—nor the internal examination of the gall bladder. Do not think the 100th part of 4 grains could be separated from the body. I could only, without detecting the metal, form a moderate presumption of its presence, speaking from the authorities (sulphuretted hydrogen, reiterated). When the quantity is very small indeed, compared to the amount of liquid, and that liquid contains also animal matter, it sensibly affects the powers of the precipitate, (sulph. hyd.) and it is often necessary to evaporate the liquid to a certain degree to obtain a precipitate, even when arsenic is present. As far as the precipitate was concerned the test was characteristic enough of arsenic. It retained its color until it stained the filter yellow. If there were arsenic enough to abide that test, I should expect to find enough to abide the final and metallic test. I applied the test of nit. silver. It threw down a precipitate not characteristic. So of sulph. copper. The true characteristic color of arsenite of copper is a grass green. The actual precipitate was an imperfect grass green. I stated that I considered the liquid tests used in this case as negative and fallacious. I did not, I believe, reduce the arsenic to metal. Christison says the alliaceous odor is not to be depended on—I do not recollect his saying that it should be entirely disregarded. The symptoms at the death-bed are not alone conclusive. The state of the body was not alone conclusive. I did not obtain the metal.

I come to the conclusion that Mr. Chapman came to his death from the amount of moral probabilities—any one proof not being sufficient; do not think the fact of my not finding the metal makes against the symptoms; did not try the sulph. copper with ginger. No fresh or unaltered animal or vegetable matter could have remained in the solution by nitric acid when subjected to the attempt at reduction; never opened a body so long after interment; nor one supposed to have died of arsenic; never applied those tests to a stomach which contained arsenic before death. Christison says that there might arise a combination of symptoms which alone would show the presence of arsenic. That, however, I consider a conjecture of his, and do not give it any weight. In skillful hands a grain of arsenic would certainly be detected in the stomach.

February 21.

Thomas G. Clemson. Before 1826, was engaged in acquisition of chemical information in the United States. In 1826 went to Europe, and in the fall of that year entered the practical laboratory of Mr. Gaultier de Clowbry, at the same time attended the lectures of Thenard, Gay-Lussac and Du Long, as delivered at the Sorbonne, Royal College of France. In 1827 entered the practical laboratory of Laugier and Filier—and afterwards the practical laboratory of Robiquet; after which I gained admittance to the Royal School of Mines and received my diploma as assayer; then came to the United States in 1831. On the 22d September, received a note from Dr. Hopkinson, desiring me

to assist in the examination of a stomach, supposed to contain poison. On the same day the stomach was opened in the laboratory of Dr. Mitchell, in the presence of Dr. Mitchell, Dr. Hopkinson and myself. The interior of the stomach was covered by a brown semi-fluid substance, to the amount of a table-spoonful. This being taken off, the stomach had rather a brownish hue; certain parts looked redder than others, and the blood-vessels might be traced by a stronger expression of brown. This semi-fluid substance was washed, and the liquid coming from the insoluble part was tested. The first test used was the ammoniacal nitrate of silver, which amounted to nothing. The other tests, such as the ammoniacal sulphate of copper and sulphuretted hydrogen, gave no evidence of arsenic; had little confidence in them, knowing there was a presence of animal matter. The stomach and a small portion of the duodenum, and the insoluble part of the semi-fluid were all treated with nitric acid, until we concluded that the animal matter was entirely destroyed. To the arseniate of lime we added a quantity of carbon, sufficient to decompose the entire quantity of the arsenical acid and the lime. This was put into two tubes, and a small portion which remained was put into a third. Heat was applied to the first tube, and carried to a red heat; observed a ring; do not believe an arsenical ring, for that part of the tube which contained this ring was taken off and digested in nitric acid; if it had been arsenic we would have discovered it by the tests. The matter contained in the bottom of

the tube was so exposed to the lamp, as that the carbon of the lamp should act upon that portion of the arseniate of lime which had not been in contact with the carbon in powder; we obtained an odor of arsenic. The second tube I exposed to the heat of the spirit lamp; was expecting a ring, and the odor of arsenic struck me; looked round, and asked if any one was burning arsenic? I found the end of the tube broken and the odor of arsenic still given out; called Dr. Hopkinson and Dr. Mitchell and the servant to smell this odor; all agreed that it had the odor of arsenic; know of no substance which has the same odor, or an odor which resembles that of arsenic; there are certain vegetable substances which do. Phosphuretted hydrogen is said to have the odor; account for the smell of the carbon in vapor from the lamp, coming in contact with the arseniate of lime not already decomposed. If in the examination of any mineral substance, I had discovered the same results, should have said they were traces of arsenic; believe it was the odor of arsenic that smelled.

Cross-examined. I believe it was the odor of arsenic; was not made acquainted with the circumstances attending the death of the individual whose stomach I was examining; was informed that the examination was made with reference to a suspicion of poisoning by arsenic. At the opening of the stomach do not recollect that any person was present but those I have named. During the course of the examination, persons occasionally dropped in. Dr. Hare was there, do not recollect seeing Dr. Togno

there. The first test used, the ammoniacal nitrate of silver, showed no characteristic precipitate; look upon this test as vague; as there was animal matter, and unless there had been a great quantity of arsenic, it could not have been discovered. The second test showed no characteristic precipitate. The color of the water was grass-greenish; know not whether onions or ginger will give such a green. Other substances produce an odor so like that of arsenic that one may be deceived. A man can smell the shadow of a shade of arsenic; cannot say what quantity will give the odor. I cannot say whether arsenic can always be detected in a metallic state, when its presence may be ascertained by its odor, although we have the means of detecting the smallest visible or tangible particles of arsenic. The fumes which emit the smell produce the metal. The fumes are the metal in a gaseous form. The same process might produce other metal than arsenic. It is possible there might have been mercury in the stomach. In that case we would have had a nitrate of mercury. Where the liquid test fails, and a metal is produced, it is necessary to apply tests to ascertain what the metal is. There are characteristics which the eye will detect so as to distinguish metals, arsenic in particular. In the tube in which the ring was formed, we sawed off the glass containing that portion of the volatilized matter. It was digested in nitric acid, and the proper test used, and we discovered no arsenic.

Mr. Brown showed a small glass tube to the witness.

There is mercury in the bot-

tom of that tube. The tube contains a metallic ring of arsenic. I take the lighter ring to be such. This may be proved beyond doubt, by the correct application of heat to that part of the tube containing the ring. Zinc would be reduced by the same process we used.

To the COURT. When I have found arsenic by the blow-pipe, I have never been deceived in detecting it afterwards. When there is not arsenic sufficient to be weighed, we apply the term "traces of arsenic," in the description of the analysis of a mineral. It is the metallic substance that gives the odor. Orfila is the best authority on poisons. Christison I do not consider as high class chemical authority as Berzelius, Gay-Lussac or Berthier.

Israel Deacon. Am Keeper of the Penitentiary for the City and County of Philadelphia; knew the prisoner, Mina, by the name of Celestine Armentarius. He came into my custody convicted of three charges of larceny; he remained until 9th May, 1831, when he was discharged by pardon 17th March, 1839; was in the habit of seeing him almost daily; never knew him to have a fit, nor ever heard of his having a fit.

Cross-examined. Am principal Keeper; do not remember Mina's having been cupped in prison, nor do I remember the marks, when he came out. If a prisoner is sick, or placed in the hospital, he is always reported to me. If he had had a convulsion fit, it would have been reported to me. He was employed in winding bobbins in the weaving department.

Ellen Shaw (recalled). There

was a dispute arose about the carriage, between Mr. and Mrs. Chapman; she wanted to go out. She said she wished to God he was gone, she was tired of him. She said she was mistress of her own house, and would do as she pleased. He said he could not spare the horse, for he wanted to break up the ground to put

his potatoes in. She replied, she wanted the horse, and she must have him. She got the carriage and she and Lino went. This was about three weeks before his death. I have heard Mr. C. say to Mrs. C., he was very uneasy about Lino's being there—it was disturbing his peace. Mrs. C. replied that Lino should not go.

Mr. Ross offered to prove, by declarations of Mr. Chapman made in the absence of Mina and Mrs. Chapman, the dislike of Mr. C. towards Mina, and that he was the last person to whom he (Mr. C.) would have confided the care of his family.

Mr. Brown objected upon the general principle that declarations in the absence of the interested party are not evidence; and upon the ground that the expressions of Mr. Chapman which they now offered to rebut, were brought out in their own examination.

Mr. Ross offered the testimony to show that the inference which might be drawn from the letter to Watkinson was not true. It was also offered to falsify the statements of Mrs. Chapman, made to witnesses examined for the prosecution.

The COURT overruled the objection. The declaration of Mr. C. so far as he approved or disapproved the conduct of Mina at his house, would be evidence to show the state of feelings between the parties.

Ellen Shaw. When Mina and Mrs. C. were absent three days, Mr. C. did nothing but run about the house like a crazy man. He cried. He said he did not know what to make of it. I told him, maybe they had gone to Mexico for they had talked about it. He said he should not be a bit surprised if they did run off together; the way they were going on. He said he wished the ship had sunk that he came over in; heard Mrs. C. say she expected to go to Mexico in a few weeks. Their bed (Mr. and Mrs. C.'s) was sometimes made by Mary, and sometimes by Mr. C. Mrs. C. did not attend to it herself because she was enaged with Lino. Sometimes he neglected to make it, or did not get it done when she wanted him to. She used to tell him if he didn't get

it done, he should have no breakfast. Mina had been two or three weeks at the house before he had any of his spells. He had no birds.

Cross-examined. About two or three weeks before I left, heard Mrs. C. say she was going to Mexico; said she would have thousands then, where she had not dollars now. I told her Mina did not look to me like a man who had much. She introduced the conversation—she said he was a dear young man, and she was going to take him for her own son; told her it was well she had not my eyes to look through, or she would not think so. The children were not mentioned. I told this to Mr. Chapman because they stayed so long. It was on Sunday they went and not Monday; heard Mina and

Mrs. Chapman talking about it, a week before I left them. It was a couple of weeks before I left them that they went away for three days. I heard them talk of it before they went to town, pretty soon after he came there. I have often heard her talk of it, and have heard him too say he was going to Mexico; never heard them say exactly they were going to Mexico together. I think I heard Mr. and Mrs. C. say something about sending William to Mexico; heard Mrs. C. talk about it, but not Mr. C.; heard Mina tell Mrs. C. that he would have the high fence (around the house) torn down, and have it fixed up in the Spanish fashion. Mr. C. used to help Mary make the bed—putting the clothes off and on. This is what I mean by his making the bed; have seen him do it a great many times; have seen him making the bed while they were at breakfast.

Re-examined. I left because things went on so bad I did not wish to stay; do not know that Mrs. C. requested her husband to dismiss me. They had picked up a worthless old woman on the turnpike and they thought she would do; went away of my own accord. My children said it was too hard a place for me. When they saw her capers with Lino, they told me I must leave; had been talking about leaving, wish I had, and then I shouldn't have been obliged to come to this plaguy trial.

Edward B. Fanning. Mr. C. requested me to tarry with him through that night, being then a little after dark; "for," said he, "I am very sick—when Don Lino is sick, all attention must be paid to him, but now I am sick, I am deserted—I am left."

I tarried with him till 10 or 11 o'clock, when Mrs. Chapman said to me, I will take care of him.

Some time previous to this Mrs. C. and Mina had gone to Philadelphia, on a Sunday morning, and were expected by Mr. C. to return the same day, or on the following morning. They did not return until the third day. The second day after they went Mr. C. became very uneasy. "I believe," said he, "that this Mina is an impostor; a roguish fellow; I would not bear such troubles for a large sum of money. I had rather be poor than to have my peace so disturbed. In all probability their object is to tarry until the family has retired, and I would like to know whether they would be guilty of improper conduct after they do return; for if I know of their going together to Mina's lodging-room I will be in there, and by . . . I'll kill him," or "take his life." Do not speak the words exactly—it was to that effect. "I would not have my peace so disturbed with this fellow," said he, "and when he does return he shall leave my house—I will have him here no longer." Mr. C. retired about 10 or 11, requesting me to sit up until they returned; and in case they should return and go together into Mina's lodging-room to inform him immediately; remained up an hour; they did not come home and I then retired.

Cross-examined. This was in the month of June; no one was present at this conversation. I had no acquaintance with Mr. C. before I came to that house. Mr. C. said to me that his friends were on the other side of the Atlantic—that his wife's affections were gone from him; he did not want to go to his neighbors with

this trouble—he confided in me as his friend, to whom he might communicate his sufferings; think William was with his mother; don't know but Mr. Ash was with them also; think I saw them start. Upon their return from Philadelphia Mrs. C. spoke of Mina's trouble on account of the news of the death of his sister. Mina was in great distress for his sister; he went into the parlor and gave vent to his grief. Mr. C. mourned with him. He showed no displeasure towards Mina at this time.

Mr. C. was not delirious in his illness when I saw him; have not been led to apprehend a charge against myself of administering improper medicines to him; am very confident Mrs. Chapman did not request me to go for a physician.

Dr. Allen Knight (recalled).

Since Mr. C.'s death was called upon to attend Mina; never saw him in a fit; bled him, at his particular request. We treated Mr. C.'s disease as cholera morbus. There was no involuntary discharge per anum. He was not violent.

Mary Hamilton. Lived at Mrs. Chapman's during the last summer; while there Mrs. C. was making preparations to go to Mexico with Don Lino. There was clothing made for herself and for the children.

**Cross-examined.* Assisted in washing and ironing and sewed the most of the time; was to wash and iron and plait Don Lino's shirts; three girls were sent for,

a cook and a waiter; it was after Mrs. C. returned from New York and after she told me she was married, that she told me she was going to Mexico.

February 22.

Benjamin Boucher (recalled). On Monday, before Mr. C. died, was mowing in the lot; a chicken came from Mr. Chapman's yard, above the shed; it was coming across the road, and it died before it got across. My son buried it. There were three chickens that died, that came across the road from Chapman's yard; some of the ducks were dug up and I fetched the remains of them with me.

Mr. Ross. What was the appearance of the bones?

Mr. Brown objected to any description of the bones. It might savor of quackery, for him to say much about these ducks, but he thought the bones ought to be produced to speak for themselves. He had no doubt they would speak with most miraculous organs.

The objection was overruled.

Boucher. There was something white on the bones; in little fine pieces, and fairly glittered; broke one of the craws open; there was something there similar to what was on the bones; wrapped them in a newspaper and put them in my hat when I started from home, brought them and left them in Mr. Ross' office. The craw was full and appeared to be sound; there was nothing left but the craw and the bones; all the rest had wasted.

MR. M'CALL, FOR THE DEFENSE.

-*Mr. McCall:* Gentlemen of the Jury—It is difficult for me to express to you the feelings with which I rise to address

you on behalf of Mrs. Lucretia Chapman. Personally a stranger to you all, with neither experience nor ability to entitle me to attention, I stand before you in defense of a ruined female, whose character, and life, and all that is sacred and precious to her in humanity, are staked upon the issue of your decision.

The Commonwealth has now closed the evidence on which it asks you to destroy that character and to take away that life. All that zeal, and industry, and talent,—all that the machinery of a vigilant police, guided by skill, and urged on by an unparalleled public feeling, could accumulate for the destruction of this defendant, has been exhausted and laid before you. Her every word and action—the very expression of her features, and the color of her dress, have been brought in judgment against her. She has passed through a terrible ordeal; and with you it will ere long rest to decide in what manner she has sustained the trial. With a patience highly honorable and commensurate with the occasion, you have listened to the evidence which, during a whole week, has been poured upon you. If its volume be any criterion of its strength, the learned gentleman who opened the prosecution may have been right in saying that it would irresistably lead you to a conviction of the defendant's guilt. Before advertng to the disparity between that statement and the proof, let me express my entire concurrence with some of the sentiments which fell from him in his opening remarks. He did not too forcibly depict to you the horrid nature of the crime with which the defendant is charged. I declare to you that I can conceive of nothing more fiendlike and unnatural—more deserving of utter abhorrence and execration. All human iniquity is summed up in the Treason. But the malignity of the crime only renders more improbable its occurrence, and dictates the greater caution in the investigation, lest, shocked and carried away by the very thought of the offense, the mind lose that even and impartial balance which is essential to the due administration of justice.

This remark, just in its general application, is in this case peculiarly appropriate. The defendant, gentlemen, appeared

at this bar under circumstances appalling even to innocence itself. I allude to the extraordinary excitement; to the prejudice—bitter, vindictive, universal—which threatened to crush and overwhelm her. Ferretted like a beast of prey by a kennel of deep mouthed calumniators, the public mind was grossly preoccupied and abused in relation to her character and conduct. Exaggeration held the pencil, and it spared no colors that could render the portrait odious and disgusting. She was pictured as a very monster, formed to adorn a niche in the gallery of infamy—another Messalina. The press, too—that mighty engine of instruction that pervades every corner of our country—which reaches every cottage, and extends its influence to every mansion,—lent its aid to blacken and to villify her. Who could appreciate the effect of all this upon even the most honest heart? We have seen it displayed by some of the witnesses in this cause, who build their faith upon newspaper statements, and who judge of the defendant and her actions “by the way in which things have turned out.” Believe me, gentlemen, the mind cannot encounter a more formidable peril in its voyage towards the truth. The danger is not the less because it is unfelt and unseen, till, drawn within its eddying vortex, reason’s frail bark struggles in vain against the insidious influence that hurries it to ruin.

However it may have operated on the public in general, the defendant believes that here prejudice can have no influence. On you, the sworn ministers of this Sacred Temple, whom duty raises superior to every passion and unholy feeling, she throws herself with perfect confidence in the justice of your decision. During the course of this trial she has shrunk from no investigation; she has courted scrutiny; invited examination—and she has had no cause to repent it. It has removed prejudices; it has cleared up mystery; it has hushed the cry of popular excitement; above all, it has exhibited in beautiful relief throughout the conduct and the conversation of this defendant, that greatest and best of virtues—truth. I trust it will be a strong shield of defense to her in this cause. Various as are the channels through which

they have reached you, her statements, even in the minutest particulars, exhibit a consistency truly extraordinary. It will be proved to you that all the varieties of food to which she is said to have attributed Chapman's illness, and which have been caught at as proofs of a guilty inconsistency, were in reality eaten by him at different meals on the day he was taken sick. Equally unsupported by the facts of the case are some other sweeping and unqualified statements of my learned friend. The bloated catalogue of vice and crime which swelled his opening remarks has dwindled into a meagre compass. He spoke of the defendant's barbarous treatment of her husband during his last illness, and her refusal to administer the medicines prescribed by the physician. In addition to the testimony already before you, which neither shows any such refusal or want of attention on her part, it will be proved to you that when she was compelled to absent herself from her husband's chamber, his two eldest daughters were in constant attendance at his bedside.

He spoke, too, of adulterous intercourse between the defendant and Mina: the motive to the crime—the motive on which this indictment is built. And yet the injured husband receives with open arms the usurper of his bed, and weeps and sympathizes with one whom he believes to be the violator of his peace, his honor, and his happiness!

To dwell upon the evidence of the cause is beyond the sphere of my present duty. With these general remarks, I shall pass to the circumstances which constitute the defense.

An individual at an advanced period of life, after a hearty supper on highly indigestible food, in the heat of summer, is seized with symptoms of acute disease, and terminates his career after an illness of five days. He is decently and regularly interred, attended by his friends and neighbors. The physicians who ministered their art in vain, thought it an ordinary case of cholera morbus. All thought that the glass of life had quietly exhausted itself without being shaken by any unnatural agent.

Subsequent events, however, disturbed this calm. Suspicion, which never sleeps, whispers in the ear of public cur-

iosity the horrible idea of poison, and fastens its envenomed fang on the wife of the deceased. The public mind is harrowed up by dreadful surmises. It demands a victim; it cries aloud for vengeance—it will only be satisfied with a public spectacle. Shame to human nature! that man should delight in the contemplation of his brother's guilt, to feed his own self-love by the comparison.

The body is taken up from its repose of death, but it exhibits no appearances that may not have been produced by natural disease. Chemistry is called into the investigation, but fails in detecting any deleterious agent. Still, the mind predisposed to a conclusion of guilt, sets fancy to work and puts recollection on the track of past events. The most trifling incidents that would before have passed unnoticed are now swelled and magnified into monstrous proofs of guilt. Innocence has no shield against such attacks; character is no protection.

Gentlemen, you have before you the substance of my client's defense: that in the course of the mysterious dispensation which awaits us all, it pleased Providence, by means of ordinary disease, to remove William Chapman to his final account; that the Commonwealth has failed in establishing the grand and primary fact that he was poisoned at all—much less that his death is in any manner to be attributed to the agency of the defendant; that my client, hunted down, has fallen into the toils which her own imprudence has spread around her. I cannot but indulge the belief that if her conduct is viewed by you with the unbiased spirit which the law requires of you as jurors, your own sense of justice will revolt at the idea of making it the instrument of convicting a wife and a mother of the most enormous atrocity of which human nature is capable. Of one thing I am certain—that you may search the records of deception from the very birth of time, and you will not find a more miserable instance of unsuspecting confidence the victim of calculating villainy, than is presented by this living monument of infatuation. It is my duty to repeat to you how, beguiled by the cursed fraud of the wretch who stands indicted with her, she linked her

destinies to his, and by this rash, but when you have heard its motives, I trust you will say, innocent step, she has evoked the storm of public censure, and brought down upon her head the fury of this prosecution.

Gentlemen, the defendant is the daughter of a respectable citizen of Massachusetts, who helped to fight the battles of our revolution, and transmitted to his children the rich inheritance of an honorable name. Endowed by nature with no ordinary faculties, she made their cultivation the means of her support and usefulness. Since the age of seventeen years, she has been employed in the arduous and responsible duties of forming the morals and the minds of a large number of young persons who have been entrusted to her care, first, in her native state, and subsequently in the city of Philadelphia. She remained for more than a year in the capacity of assistant teacher in the very respectable Seminary of Mrs. Le Brun in that city, and after leaving her became the principal of a similar institution. During this period she gave satisfactory evidence of her ability as an instructress, and sustained an unblemished moral reputation. As the best proof of it, I mean to call witnesses from those over whose education she presided, and from among those who reposed in her the highest confidence that one person can repose in another, by entrusting the lives and the intellectual and moral improvement of their children to her care.

In the year 1818 she contracted a matrimonial alliance with her late husband, who, becoming possessed of a remedy for obstructions of speech, established a school for the relief of persons laboring under those defects. They remained in Philadelphia until the year 1828, when they removed to Andalusia, in this county, a spot well known to all of you, and which will long be rendered memorable by the events which have given rise to this prosecution. Their union, I must not forget to add, was crowned with harmony. It will be proved to you, that from the time of their marriage, till the event that dissolved it, they lived in the enjoyment of as large a share of domestic happiness as ordinarily falls to the lot of mortals.

On the 9th of May last, the curtain opens upon the scene whose conclusion, I trust, is witnessed in the transactions of this day. On the evening of that day, as the family were collected in the sitting room, a stranger claimed admittance. The door was opened by one of the pupils, and not by Mr. Chapman, as Ellen Shaw told you, and the stranger, dressed in the garb of misery, petitioned for a night's lodging. In reply to an intimation from Mr. Chapman that there was a public house in the neighborhood, he said that he had already been refused admittance there on account of his poverty. Well had it been for this defendant had she, too, closed her doors upon him. But actuated only by the purest and kindest feelings, she readily accorded him admittance. It was no unusual occurrence. Let it not be forgotten, to her honor, now when every vice and every crime is imputed to her, that there was in that house a beggar's room—devoted to the hospitable reception of the forlorn and destitute.

That stranger, as you already know, was Mina. Gentlemen, I do not ask whether you blame the defendant for receiving him, for I am confident that your hearts respond to the feeling that dictated that reception. The dawn of the connection between these individuals is bright and radiant with the holy light of universal charity—that charity which stops not to count the cost and calculate the gain—but which only sees in misery an object for relief. This monster of cruelty—this paragon of vice, as they would have you believe her to be—when she welcomed the miserable outcast that had been spurned from the gate of selfishness, only acted in accordance with the dictates of our blessed religion: he was an hungered, and she gave him meat: he was thirsty, and she gave him drink: he was a stranger, and she took him in: naked, and she clothed him. The history which he related of his misfortunes you have already in part heard. I shall content myself, therefore, with a very brief recital. He represented himself as the son of the Governor of California, the heir to immense wealth and distinguished rank. He said that he had left his paternal roof in the company of a friend, for the purpose of foreign travel: that in Paris, his com-

panion died suddenly; and that all his property, together with that of Mina, which happened to be in the same apartment, was confiscated by his Most Christian Majesty. This unforeseen accident left him in a strange land, without friends or pecuniary resources. Recollecting that he had a relative in the United States, he directed his course to this country. He arrived at Boston too late to see his relation, who had taken his departure for Mexico; but learning that a friend of his, named Corsanova, an individual who plays a very conspicuous part in these transactions, was then at the residence of Joseph Bonaparte, he bent his steps towards the mansion of that gentleman. From his ignorance of the country, instead of stopping at Bordentown, he was carried in the steamboat to Philadelphia, when he was seized with a violent attack of disease. Restored to his health by the charitable assistance of a physician, he had set out on foot to prosecute his original purpose of visiting his friend at the Count's. It was on the evening of the first day of his journey, that he solicited a shelter from the hospitable inmates of Andalusia, and imposed on their unsuspecting credulity, the story of which I have given you a mere abstract without attempting any of its embellishments. Its truth or its falsehood is not now a matter for your consideration. Fanciful and extravagant as it may appear, it obtained implicit credence. So deeply rooted is our affection for the marvelous, that there is little beyond the scope of human belief, especially when it comes from the lips of misery, and surprises the judgment through the avenues of the heart.

It is enough, however, for my client, that she was not the only one who gave credit to the tale. Mr. Chapman, himself, was perfectly satisfied with its truth. Part of it he tested by the evidence of his own vision. He examined the person of Mina, and found on him unequivocal marks of disease, and of the cups which he said the physician had applied.

Mina arrived at Andalusia on the 9th of May. On the 11th, the defendant, at the request of Mr. Chapman, accompanied him to the residence of Joseph Bonaparte, for the purpose of seeing the friend of whom he had spoken. This

friend, as you may suppose, was not to be found; but what served to increase the delusion of this unfortunate woman, she was told that some Spaniards had been there and taken their leave but few days before.

Firmly impressed with the belief of the reality of his pretensions, Mr. and Mrs. Chapman determined to give Mina an asylum under their roof until he could communicate his situation to his father, and obtain relief from that source to which nature pointed him.

In the prosecution of this design, they wrote the letters which you have heard read, informing Mina's parents that he had found a home in the bosom of their family, where he would receive every attention which his situation and rank demanded. These letters, Mina, accompanied by Mrs. Chapman, took to Mr. de Cuesta, the Mexican Commercial Agent in Philadelphia, who is now in court, and will be called as a witness, for the purpose of having them forwarded to Mexico. Mrs. Chapman left Mina at the house of that gentleman, and on returning, after an absence of several hours, found him partaking of the hospitality of his board, and to all appearances treated with the respect due to his pretensions. Was there any longer room for doubt? If a suspicion of his character had ever flashed across her mind, that suspicion was now dispelled. Had the intelligence of the Consul discovered the falsehood of Mina's representations, would he not have unmasked the impostor, and saved her from the peril to which she was exposed? Mr. de Cuesta, unacquainted with her and her concerns, did not feel himself called on to make known his suspicion, and thus became the involuntary means of confirming the delusion under which she acted. This was not the only occasion in which Mina availed himself of the respectable name of the Mexican Consul in the execution of his schemes. You will remember that on the 16th of June he forged a letter to Mr. Chapman, purporting to be signed by Mr. de Cuesta, expressing his grateful acknowledgments for the kindness displayed towards his countryman, and his intention shortly to return his thanks to him in person.

Mina, thus domiciled at Andalusia, was treated with all the tenderness of parental affection. He proposed to remain three years in the family of his benefactor for the purpose of acquiring the English language. He ranked himself as a pupil, and, as a reward for her instruction, Mrs. Chapman was to receive the sum of six thousand dollars. The generosity of Mina's promises, accorded, indeed, with the loftiness of his pretensions. His gratitude knew no limits. He undertook to fit up the house and grounds in the Mexican style, and as a mark of his grateful recollection of their services, in a paper purporting to be his last will and testament, he bequeathed fifteen thousand dollars to the defendant, and a similar sum to her husband.

It is natural to suppose that the kindness which sprung originally from sympathy for distress, was influenced by his brilliant tales—of mines of silver—of rank and honors—of Mexican liberality and munificence. For though I advocate the innocence of my client, I do not mean to claim for her an exemption from the ordinary feelings and attributes of human nature. The wretched outcast—the suitor for a night's lodging, was now invested with a claim to regard more powerful than any which misery could afford. Self-interest may in part have dictated the conduct which they, Mr. Chapman no less than the defendant, pursued towards Mina, and which is now to be made the instrument of her destruction. It cannot be doubted that even down to the period of Chapman's death, Mina was the object of his respect, confidence and affectionate regard. It is clearly proved by the deep and sympathetic interest which you are told he exhibited in Mina's affliction for the pretended loss of his sister—by the order for the suit of mourning, on Mr. Watkinson, and by an additional order, which will be read to you, on Mr. Fassitt, of Philadelphia, dated as late as the 15th of June, for the payment of money to Don Lino.

The frequency of the association between the defendant and her pupil, which is urged as evidence of a guilty combination, is explained in the most satisfactory manner by the interest which his supposed misfortunes created; his liability

to violent attacks of disease which required immediate assistance; and still further, by the domestic arrangements of the household. The feeble health and quiet disposition of Mr. Chapman compelled him to withdraw from the more bustling duties of the institution. The active management—the principal control and superintendence of the out-door, as well as in-door concerns, devolved upon the defendant. She was therefore from necessity in the habit of social intercourse and familiarity with her pupils. It will be proved that she frequently accompanied them in their walks and rides. It will be farther proved that she never went to Philadelphia with Mina unless in the company of a third person.

Such was the situation of the parties at Andalusia at the period referred to in this indictment. In relation to the transactions which form the immediate subject of that indictment, the defendant will endeavor to afford you every information in her power. It cannot be expected that she should be able to prove to you whether she gave his medicine or that medicine to her husband during his illness, or that she closed her windows at this or that particular hour of the day. She will give you all the light that she can. She has, it is true, neither ducks nor chickens, nor exhumed bones, to present to your consideration. I mistake—there is one chicken which I must immediately introduce to your notice, and that chicken was purchased from Mr. Boutcher himself.

The poison is alleged in this indictment to have been administered in chicken soup. The whole story of the soup and chicken, as you have heard it from the lips of Ann Bantom, carries absurdity on its very face. Instead of asking you to believe that in a family avowedly economical, an entire chicken should have been thrown into the yard uneaten and untouched, a story so improbable as at once to excite suspicion, we shall present to you the testimony of a daughter of Mrs. Chapman, who partook with impunity of this very soup, thus alleged as the deadly vehicle of poison, who will tell you, what is supported by all the probabilities of the

case, that the greater part of the chicken, which was a small one, was eaten by her father, while he scarcely tasted the soup.

The death of her husband, which took place on the 23rd of June, threw the defendant, and those most dear to her affections, helpless and unprotected, on the broad bosom of the world. It was then that Mina, cloaking the malignity of a demon under the mask of a sacred obligation imposed by a dying man, told her that Mr. Chapman, in his final hour, had enjoined on him to be a protector to her, and a father to his children, and ensnared her into the act which has proved the grand source of all her difficulties. As a reason for their immediate marriage, he urged his desire to return without delay to Mexico, and the customs of his own country, which regarded such a marriage as involving no breach of decorum or offense to public sentiment. The defendant yielded to his solicitations, and, in the expectation of immediately leaving her country, she brought her sister and her family from their residence at Syracuse, in the State of New York, to take up their home at Andalusia, where they have remained till this day.

It is not my wish, even were it in my power, to follow this master of deception, Mina, through all the scenes of folly, falsehood, and fraud, which have developed themselves during the course of this trial. The mind is bewildered in the maze. So young, yet so accomplished in villainy—with a subtlety of genius and fertility of resource that elude every difficulty, with no moral principle to check him in his wild career—deception seems his very element—the ruin of others his pastime and delight. To him the forgery of a certificate or a draft is a trifling operation. He first marries and then plunders the victim of his arts; and yet, by circumstances artfully interwoven, and a plausibility rarely surpassed, he contrives to allay the suspicions which his injuries had begun to excite. It was not till Mina was publicly arrested at Boston as a common felon, that the veil was completely removed from her vision, and she awoke as from the illusions of a dream to the awful realities of the precipice on whose brink

she was standing, and from which I trust it will be your duty as well as pleasure to rescue and deliver her.

I have thus endeavored to present to you as plainly and briefly as I could, the situation of the parties at Andalusia, and the transactions which occurred since the time that Mina appears upon the stage. When to these explanations of what may be deemed equivocal in the defendant's conduct, shall be added the respectable testimonials of a good character which her past life enables her to produce, I trust you will hesitate long before you believe that one against whom accusation has never dared to point its finger, should all at once plunge from the proud height of an honorable reputation, to the lowest deep of perfidy and crime.

You will examine her conduct with the humane and charitable eye that becomes your office. You will weigh it in the balance of human infirmity. To the charge of folly and indiscretion she pleads guilty, with sincere contrition; but she asserts her innocence of crime. Many of those follies and indiscretions may have flowed from the kindest and best of feelings, and investing them with their darkest and most malignant coloring, they cannot afford any reasonable evidence of the atrocious crime with which she is charged. For them she has already most grievously answered at the bar of public opinion—pursued by the whips and scorns of prejudice and suspicion.

You will remember, too, and it cannot be too strongly impressed upon your minds, that the evidence you have heard has been far from substantiating that all-important and essential fact laid in the indictment, that William Chapman died by the administration of poison. Indeed, from the evidence and considerations which will be submitted to you, it is highly probable that he came to his death by natural disease. For the purpose of satisfying you on this point, I shall immediately adduce to you medical evidence of the highest respectability.

Under all the circumstances, I trust that your humanity and your consciences will induce you to say by your verdict, that the proofs which the Commonwealth has exhibited to

you, are much too feeble to take away the life of a human being.

THE WITNESSES FOR THE DEFENSE.

Franklin Bache, M. D.^a Am professor of chemistry in the Franklin Institute, and College of Pharmacy, in the city of Philadelphia. The symptoms of poisoning by arsenic are very diversified; they have certain general characters, to which there are numerous exceptions. The most general symptoms are such as occur in cholera morbus and violent colic; such as puking and purging; general distress at the pit of the stomach; cold perspirations; towards the end of the symptoms, coldness of the extremities; lividness: sometimes a metallic austere taste in the mouth; burning in the stomach; before death, convulsions very frequently supervene; there are cases on record where a very few symptoms of indisposition have been manifested; the symptoms produced by arsenic are so various that no satisfactory conclusion can be drawn from them in proof of poisoning by arsenic; variation in the symptom may depend on the age and constitution and the quantity of poison. Have never treated a case of real or reputed poison by arsenic; poisoning by arsenic has various phases; sometimes there is no puking, but diarrhoea alone; and sometimes neither; five or six grains will produce death, or less, if there is no vomiting. All appearances considered to characterize arsenical cases, occur in other diseases. Arsenic often produces violent inflammation of

the stomach, but the appearances in death by yellow fever are very similar; cholera may produce violent inflammation of the stomach; have no opinion on the effect of arsenic to hasten or retard putrefaction, except what I derive from books. Orfila says it has no effect either way—and he is the highest authority I know; it preserves locally, without having effect on other portions of the frame; bodies may be preserved unusually long from peculiar circumstances, such as the condition of the body as to leanness or obesity; state of the ground; or nature of the disease.

Arsenic is that poison which is, perhaps, most easily detected a long time after death; its mineral nature, preventing its being lost. It can be detected in very minute quantity; some authorities state that the 200th part of a grain may be detected. Proofs of the existence of arsenic are made out chemically by tests on one hand, and reduction on the other. The tests, when they yield the characteristic appearances, furnish a strong proof of the presence of arsenic; but the reduction of the metal is more conclusive. The exhibition of the poison in its metallic state is the best evidence the case admits of; and, in my opinion, can always be effected when the liquid tests indicate arsenic. The reason why I consider reduction a better evidence than precipitation by the liquid tests, is, that precipitates are more likely

^a Dr. Bache did not appear in court, but his deposition was read by Mr. McCall.

to be mistaken in their character than metallic arsenic. Would not be willing to decide on the presence of arsenic without reduction. I think that if the mineral were present in sufficient quantity to preserve the body, it could be readily detected. Reduction is the most decisive test; think the alliaceous odor is not to be depended upon, because other substances have some analogy in odor.

Cross-examined. Do not recollect having seen a case of cholera, in which such burning heat in the stomach, as is described in this case. The lividity described is one of the appearances after death in cases of poison by arsenic. From the symptoms detailed, should certainly say Mr. C. did not die of an affection of the head; if there is no vomiting, less than 5 or 6 gr. may kill. Phosphorus has a smell somewhat alliaceous; in this case, phosphorus could not be present in the body; but phosphoretted hydrogen, which has a smell somewhat alliaceous, and which is sometimes the result of putrefaction, might possibly be present. Zinc is said to have a smell somewhat like garlic, but I have never perceived it. The smell of garlic itself, in cases of examination soon after death, might be mistaken by the inexperienced for the alliaceous smell produced by arsenic; think garlic could not have been present after so long an interment as in this case. Nothing else that occurs to me will produce the alliaceous smell

Dr. Joseph Tognio. Am a practitioner of medicine; studied with Dr. Chapman and graduated in the University of Pennsylvania;

have delivered lectures on anatomy, physiology, comparative anatomy, and medical jurisprudence. Dr. J. K. Mitchell invited me to his laboratory every time that any thing interesting was going on. One day I found him busily engaged with his friend Mr. Clemson, whom I had never seen before; and who was introduced to me by Dr. Mitchell; they proceeded to their examination; a solution, which was said to be that produced from certain manipulations of the stomach of a Mr. Chapman was over a spirit lamp for the purpose of condensing the fluid. Dr. Mitchell and Mr. Clemson tried two tests in my presence; the one was nitrate of silver; this trial failed in obtaining the desired result. I was convinced of this, and so was Dr. Mitchell and Mr. Clemson. The ammoniacal sulphate of copper was then applied, and this test also failed in producing the desired result. I examined a glass jar, in which was the stomach of Mr. Chapman; the stomach was in spirit of wine; took it in my hands, and found there was a cut through the coats of the stomach, which exposed its cavity; I turned the inside out and the whole surface presented one uniform pale color resembling a piece of tripe after being washed, with the exception of two dark purple spots of the size of a cent, and I believe that they were on the posterior part of this cavity, at about a distance of one inch from each other. The stomach was somewhat hardened by the spirit in which it had been plunged, and its apparent consistency increased by this process; the two spots spoken of were a mere cadaverous phenom-

enon, the settling of the blood by its specific gravity in the most depending parts of the stomach.

Sulphuretted hydrogen will detect any metal; the detection of arsenic is exhibited by a canary yellow precipitate; the reduction of the metal is the best test of arsenic; believe a portion as small as the 200th or 300th part of a grain has been obtained; do not believe there could be arsenic enough to resist putrefaction in the stomach, which could not be detected by the regular process; should not feel myself authorized to say there was arsenic from the liquid tests without reducing the metal. All the symptoms detailed by Dr. Phillips, accompany cases of cholera morbus. Cases of violent indigestion would present very much the symptoms detailed in this court by various persons.

For the opinions expressed, I rely on Orfila and Montmahou; Berzelius I should put first as a chemical authority. Christison is a distinguished authority; should say, from the symptoms, post mortem examination, and chemical tests, that William Chapman did not die of arsenic.

Cross-examined. The general symptoms of poisoning by arsenic are violent vomiting, one, two, or more hours after taking the poison, a constriction of the throat; pain and burning in the stomach; great lassitude, disabling the individual almost to move; after the vomitings have continued some time, thirst; and if this state continue, purging follows; the circulation is slow, and participates in the general prostration of the vital powers; there are nervous symptoms, such as convulsions, and at times the loss of the intellectual faculties.

The reason why I believe he did not die of arsenic is, that no arsenic has been found; have no testimony that he did die of arsenic from the exhumation; there was no appearance in the stomach that induced me to believe he did die of arsenic; my reason is this; that at the time Dr. Mitchell stated that the mucous membrane was detached, which was an evident proof of an advanced stage of putrefaction, which must have destroyed all the appearances which existed during life. There was no appearance in the stomach that he did not die of arsenic. He had not any one symptom that any person dying of arsenic would not have. Believe the stomach was in spirits of wine; should put greater reliance on the symptoms and the exhumation if the tests had not failed; these failing, their failure reacts upon the symptoms and exhumation. If the poison had been found then I should say that the symptoms and appearances were to be regarded, to show that the poison was in the body during life, and not put in after death; if there is no arsenic found, all symptoms and exhumation go for nothing; in a word, no poison—no poisoning—no cause—no effect; consider that the symptoms, exhumation, and tests, are no evidence that he died of arsenic; the symptoms, exhumation, and tests satisfy me that he did not die of arsenic; if arsenic enough had been given to produce death, it could be found, and because upon the proper tests being employed, it was not detected, infer he did not die of poison; there is one case recorded in Orfila, of a man who was supposed

to have died by arsenic, and no trace of it found afterwards, but it is not believed to be true; such cases are not believed by persons who cultivate medical jurisprudence; Christison, as well as Orfila, always they have analyzed the contents of the stomach of persons dying by arsenic, have found it by reduction; the alliaceous odor, as a single test, standing by itself, ought to be entirely discarded. Whenever the fumes are sufficient to impart this smell, the metal may be reduced.

Col. Estanislao De Cuesta. Am Consul of the Mexican Government, for the city of Philadelphia. On 17th May, 1831, two persons came to my office, one saluted me in Spanish, telling me that he was an unhappy Mexican, whose name was Lino Amalio Espos y Mina, and requesting me to hear his misfortunes; the other was Mrs. Chapman. He said he was a Mexican whose father, he said, was governor of California, and his mother in Mexico. His rich grandfather sent him with an English gentleman to Europe for some years, that he might see the world; they went to the city of Mexico where his mother recommended them to Mr. Taylor, Consul of the U. S. at Vera Cruz, who received them into his house and too their passage for France; they arrived in France, but in a few days the English gentleman died suddenly; the English Consul took away all their trunks and money; he told him a part of those things belonged to him, but the Consul would not believe him; a gentleman gave him \$100 and he came to Boston, having a relation in that place, and having heard that his grandfather

had money in a bank there; was disappointed in learning that his relation had gone to Mexico; determined to come on to New York, to see if he could find a friend of his who he was told was at Joseph Bonaparte's; went there and could not find him; determined to come to Philadelphia by land; went to a tavern to ask for something to eat, and a room to rest; he had no money; they would not give him anything; saw a country house where he stopped to ask for the same thing; he told them his story; they said he had better remain there until he found some friend or received news from his family; he accepted the offer; they took him to Bonaparte's; they could not see him and came back again; he requested me to send the letters which he had in his hand to his family, and until he received an answer he said he would wait in the house of the lady who was with him, and who was the virtuous, kind and hospitable wife of the gentleman of that house.

I remarked to him that I could not believe his story, because of his manners, and his bad language, did not show him to be such a man as he would have me believe; he said he did not know where his father was, or whether he was Governor or not, for he had only heard it from his grandfather; his father was in some high employment, and he thought it was Governor; then asked him where was the place at which he had resided; he could not give me any answer; I asked where his mother lived in the city of Mexico; knew from his answer that he had never been in Mexico, and told him so; asked him

for his passport; he replied he had none; I then asked him for his certificate of baptism, which all of my countrymen carry with them; he said his passport was in his friend's power, and he did not know what had become of it, and the certificate of baptism was in his trunk with many other documents which had all been taken away; told him I would write to the American Consul and send him the letters he had given me for his family; which were directed to the care of the Consul at Vera Cruz. He said he would write another letter to his mother. The lady said she wished to attend to some business and would call again in one hour, to take him back with her. The lady did not come back at half past three o'clock; I asked Mina if he would come with me and take dinner; it being a custom in my country, that when a person is called to dinner, he invites the stranger with him; but it is customary also, that the stranger never accepts such invitation, because it is understood merely as an act of politeness. But Mina accepted the invitation and went with me; was ashamed to take him home, because he was so dirty that he

looked like a beggar; but as he came to see me with a lady who appeared to be very respectable, and she herself brought him in her own carriage, thought I could take him, making this apology to my mother and sisters. My family were at table; in a few minutes after, the waiter told me that a lady whose name was Mrs. Chapman, was in the parlor asking for Mina. Told her I would be honored if she would accept a place at the table, as we were just beginning; she thanked me, telling me she had dined. As it was very warm I ordered a lemonade to be brought to her in the parlor; I accompanied the lady to her carriage; observed that Mina was without his hat and told him he had forgotten it; he said his head was disturbed and he did not know what he was doing; as soon as he got his hat they went away in the carriage; that night was informed that Mr. Taylor was no longer Consul at Vera Cruz, and that he was then at New Orleans; in a day of two after I wrote to him, and sent Mina's letters to Vera Cruz by the first vessel; on the same day I wrote this letter to Mina:

Sir,—I have learned that Mr. Taylor is at New Orleans. I have written to him, and as soon as I receive an answer from him or from Mexico I will inform you. Present my respects to Mrs. Chapman, and believe me, &c.

Col. Cuesta. Never received the answer from his family, nor from Mr. Taylor; a few days after I had written to Mina, received his answer in very bad Spanish, in a kind of spelling peculiar to himself, and not to be found in any book.

A few days after he came to

my house with Mrs. C. and met my sister; my sister told them I was sick in bed and they went away; about ten days after, I met Mina in Chestnut street; told him I would not be spoken to by him and he must never stop me in the street again, nor come to my house; that his conduct

was very wrong and if he thought to deceive me he was very much mistaken; a few days after, I found a letter on my table directed to Mina's father; the address was in Mina's hand; the letter was written on thick paper and sealed with a wafer; asked one of my clerks who brought that letter there. He said that Mr. Le Brun brought it, asking him to have the kindness to send it by the first opportunity, without saying from whom the letter was. I put it among other letters to Mexico and sent them by the first opportunity. A few days after, Mr.

Page, the tailor, asked whether I knew Mina; told him I believed him to be an impostor.

About the 12th September an officer of the police came to see me from a magistrate, to know if I could tell him where Mina was, and whether I could describe him. I gave a description, however, which I believe he wrote down; some days after he came to my office with a certificate, signed by Mr. Montolla, and asked if that signature was genuine; told him it was not. Some time after received a letter from Mrs. Chapman. (Letter produced and read.)

Erie, November 29th, 1831.

Worthy and much respected Sir,

Pardon the liberty I take of addressing a letter to you, and under the most distressing, the most agonizing circumstances, do I write. Alas! alas! kind Sir, my pen almost refuses to perform the painful task of informing you, of my melancholly situation; I am a prisoner! Oh! Sir, little did I think once, that I should ever be compelled to address a letter to any one from the gloom of prison! and that under circumstances the most appalling! Ah from what a height have I fallen! But yesterday, I had, and enjoyed all that heart could wish; blest with competence, surrounded with a lovely family, enjoying the society and smiles of a husband I loved; what more could I wish? what more had this world to bestow?

But, alas! the cruel spoiler came! and in one hour, all, all is blasted! All my hopes and prospects are vanished! and O! my husband, who once would have stepped forth to protect me, and sympathize with me, is now no more! his head lies low under the clods of the valley, unconscious of the sufferings of his family! O! how enviable is his lot to mine! While my bleeding heart is torn with a thousand pangs by the death of the kindest, the best of husbands, as if this was not enough to complete my sufferings in order to put the finishing stroke to them, and dart the last pang to my already too much agonized bosom, I am charged, am arrested, on the false, the cruel suspicion of "being thought accessory to the death of my husband." Was it not for conscious innocence, and the happiness of my dear babes (those living remains of my much beloved husband; they were ever very dear to him, and are for his sake, as well as their own, very dear to me likewise), life would be intolerable. O that Heaven would plead my cause! and though I have acted very foolishly, very imprudently, yet may God in his infinite mercy, restore me again to my bereaved, my distressed little family. When I reflect, that there

is a probability that my poor dear husband was poisoned, and that myself am suspected of having assisted in the horrid, the atrocious crime, I am paralyzed! I am distracted! but I am innocent; however dark and unfavorable, circumstances may appear against me. I have been infatuated with a mysterious stranger; a base Impostor! I have been decoyed and duped by him; so, that without due consideration of consequences, which might result from such a step (believing him, alas! to be a grateful friend to my deceased husband, self, and children), I precipitately married the cruel monster; and plunged myself and fatherless children into irreparable ruin! The remorse, chagrin, and shame I felt, on account of having been so dreadfully duped in my marriage with that accomplished Villain, are not to be described; for I very soon learned that he was a vile Impostor! And ah! I then feared the worst of consequences. Alas! thought I, perhaps I shall be thought to be an accomplice with him: And where is the innocent person, who would not be filled with fear, if united to so vile a wretch, as I was? My dear little sons having offended him one day, he said "he would never caress them any more;" declaring at the same time, that "he never forgave injuries!'" but that he delighted in revenge! I acknowledged my unhappy marriage to Mr. M'Elwain, and gave him several papers written by Mina. Very soon after this I received a letter from Mr. M'Elwain, informing me, that Mina was arrested in Boston. Though conscious of innocence, I apprehended that it might be possible, that I might be arrested; and oh! the dread I was under of the horrors of a prison! and equally dreaded the thought of being obliged to appear in court. Full of these apprehensions, I determined to leave my home for a while, presuming by so doing, I might avoid the evils which I so much feared; but this, I fear, has proved an unfortunate step; I fear it is construed as an evidence of my guilt; I presume it has been the cause of exciting the public mind to such an unprecedented degree against me; for the public journals teem with nothing but cruel invectives.

I never kept a boarding house, before I was married, as was stated in the Philadelphia Bulletin, with much more that was false.

I came to Philadelphia in the autumn of 1813; commenced teaching a school the same autumn; and likewise commenced learning music and French with Mrs. Le Brun the same autumn; and in 1814, I entered Mrs. Le Brun's Boarding School as a teacher of the English branches, where I remained 3 years; Mr. and Mrs. Le Brun know something of my character; and I trust they are among those who believe me innocent; and those who now have no compassion for me, if they but knew the truth of my story, their very souls would weep blood. While I write, my eyes are bathed in tears, and my heart is overflowed with sorrow, occasioned by my unparalleled sufferings! and O! my dear children! what will become of my poor, dear children!! Is there no redress for a heart-broken mother, who would now only wish to live for the sake of her children? Ah! kind Sir, tedious as my narrative is, I beg that your dear mother may be made acquainted with it; she is the mother of a numerous fam-

ily; she will feel tenderness for me, who am a mother likewise; she will likewise feel sympathy for my poor aged mother, who is now 83 years of age, she has been the mother of 14 children, I am her youngest surviving child; alas what must she feel on my account? I fear she will be like the patriarch Jacob on the loss of Joseph; "his afflictions were so great that he refused to be comforted." My Father is deceased; he was a revolutionary officer, Col. Zenas Winslow; his native place was Brewster, Barnstable Co., Cape Cod; his respectability, as well as my character, might be ascertained by addressing a few lines to Gen'l Cobb, or Doc. Sampson, who reside at Brewster, and are well acquainted with me and my origin. Oh! worthy sir, may I not hope, that when your dear mother and I trust sympathizing and kind hearted sisters, take into consideration, the manner in which I have been so dreadfully duped, and so completely ruined! and by whom?—By an ungrateful wretch, one whom I for the sake of charity and humanity had been fostering as my own child! May I not hope that they will kindly, nay, zealously, stimulate you to step forward and be a friend to the wretched widow, and the ruined orphans? He whom I befriended, has caused our destruction! And now, Sir, if you kindly befriend us, if it is not in my power ever to make you a suitable return (for I am now in a destitute and forlorn condition), I will invoke Heaven to smile propitiously on you and yours; and my much injured babes would lift their innocent hands to Heaven and fervently crave the choicest blessings that Heaven can bestow, to rest upon your head, and surround your path. I have not heard a word from my poor children since the 20th of September, when I left home. I sigh with a broken heart, and mourn with bitter grief, on account of them; they are not only rendered pennyless, but are deprived of the caresses of their fond parents, who ever doted on them. The favor I am about to ask of you, is great; yet I hope, with your humanity, not too great for you to grant: it is this; that you will have the goodness to have an interview with John Campbell, Attorney at Law; he resides in 6th st. near Race, and consult with him respecting my case; I trust he will do all in his power, to befriend me; and if he should think it necessary that an able Advocate should be employed to aid him in pleading my cause, may I not humbly hope that you will grant me the great favor of employing one for me? And I do beg, with many tears, that you will condescend to call on me with Lawyer Campbell, immediately on my arrival at Doylestown, which, I presume, will be as soon as 8 or 10 days from now. With much confidence that you will forgive me for asking so much of you, and a humble reliance that you will comply with my request, I now proceed to give you an account of him who has been the foul destroyer of my peace, my happiness.

Mina had been but a few days at my house, when he, together with myself and husband, wrote letters to his family in Mexico; myself and son Wm. calling with him on you with the letters that they might be forwarded to Mexico. His dignified demeanor at my house, and your respectful behavior to him, while at yours, inspired

me with the belief that he really was the son of Governor Mira, as he had already stated; and while he was at the table, dining with you, your sisters kindly entertaining me in the parlor, the conversation soon turned on this stranger; speaking with much pity and sympathy on account of the misfortunes which he had sustained; your sister Romania said to me, "This young man (Mina) is very rich in his own country." Had any doubts remained relative to his claim of being the Governor's son, this statement, together with your own grateful expressions for the kindnesses I, and my husband had bestowed on him, would have been sufficient to destroy them. He returned with me and my son to Andalusia, where he was again welcomed by my kind husband, who now, with myself, believing him to be a person of distinction, treated him with the greatest hospitality; and during frequent indispositions at our house, we bestowed upon him the utmost care & attention, which he appeared to receive rather as his due, than as a kindness. We even went so far in our indulgences to him, as to order suits of clothing for him at the corner of 6th & Chestnut, his second suit was a suit of mourning, he having received the news of the death of his sister. Thus were we deluded by him. He evinced an extraordinary attachment to Mr. Chapman, myself, and to all our children, frequently saying he had found a father, a mother, three sisters, and two brothers in a strange country. I continued daily to give him lessons in the English language, for which he expressed much gratitude, saying to me one day, in the presence of Mr. Ash, who was then a pupil of mine likewise, that he would give me \$6000 if I would teach him to speak the English language fluently in three years. He frequently spoke to the great opulence of his grandfather, saying that he owned a silver mine, and that his father was an only son, &c. &c. I presumed he told you much the same interesting stories in Spanish and that yourself was duped by him likewise; or else, methinks, you certainly would have informed me if you had suspected that he was an Impostor. If he succeeded in deceiving you (one of his countrymen), and numbers of respectable gentlemen, both to the south and north, is it to be wondered at, that I, an unsuspecting female, was deluded by him likewise?—Would to God, that you had, timely enough, discerned his being an impostor to have saved the father of my children, and myself and lovely babes from ruin! from destruction!! For alas! when the sad news was breathed to me by Mr. Watkinson (his tailor), that he had received information from you, that you believed him to be an Impostor, I was then, ah! I was then unfortunately married to him! You will say I ought to have been inexorable, so soon after my husband's death; this I grant, but, when I refused him, urging the recent death of my husband, he declared that my husband, on his death bed took his hand and desired him to be a father to his children, &c. this he told to Mr. Ash, as well as to me, and others.

When I urged him to desist his importunities, on account of disparity of years, telling him that such a union would be thought ridiculous in this part of the world, he said that the customs were

very different in Mexico, and to that city, to his father and mother, he would immediately return with me and my children, if I would marry him; adding that his eldest sister, when but 20 years of age, was married to a gentleman who was 60 years of age. That it was honor, it was gratitude he owed my deceased husband, as well as myself, for kindnesses we had bestowed on him, that induced him to offer me his hand. Alas! the intrigue, the wiles of a demon, which he practiced to decoy me, to gain my consent to marry him! He protested that he wished not to possess any of my property, and on this account, my sister and her husband, who resided in the state of New York, a distance of upwards of 400 miles, immediately came to reside at my place, having sold their own little property at home; thus was my dear sister's and her husband's happiness marred by leaving their own happy home, to go among strangers, and then to witness the ruin of myself and offspring.

Before my dear husband's sickness he always spoke of being on terms of great intimacy at your house, saying one day to myself and husband, with some degree of ostentation, that you had ordered a fine large carriage to be built for him, that he hoped soon to have the pleasure of seeing my husband and family ride in it; I think Mr. Ash heard him relate this likewise. I never heard him express a thought of returning to Mexico before my husband's death, but that he intended to reside several years in America.

Sir, I hope the goodness of your heart will incline you to forgive me for adding still more to my already too lengthy epistle; but I am anxious that you should know a few more particulars respecting the author of my ruin!

The day but one before Mr. Chapman was taken ill, Mina went to Philadelphia, returned late in the evening, bringing a letter from you to Mr. Chapman; the letter contained grateful acknowledgments for favors bestowed on your countryman, assuring him in a very respectful manner, that you intended very shortly to visit him, and make personal acknowledgments of the obligations you were under to Mr. Chapman. Such a letter as this, from your kind hand, was very pleasing to my poor dear husband, and served to ingratiate Mina more than ever in his favor. On the Sunday following, Mina went to Philadelphia again, returned on Monday morning, brought several lemons, a pine apple, and several dates, said your mother had sent them for Mr. Chapman, as he was then ill. This letter of yours, my sister and eldest daughter both saw; but since the death of my husband, and so much of his villainy has come to light, I have thought perhaps this letter was a forgery, and that perhaps he did not visit at your house at all.

When he left my house for Baltimore, he said he was going to receive several thousand dollars of his friend Carzanova, who was at that place; but when he returned, he said his friend had left for Mexico a few days before he arrived; so he was much disappointed; but said he had learned that a cousin of his was residing near Boston, who was very wealthy, that he would immediately go and ob-

tain a large sum of money of him. It was on his return from Baltimore that I informed him of Mr. Watkinson's having suggested to me that you thought him an impostor; he very artfully replied that you were offended with him on account of his discontinuing his addresses to your sister Romania, with whom he declared he had corresponded ever since he first called on you, till Mr. Chapman's death: He likewise alleged that a reason, why he had not had returns from Mexico, was, he had learned, that you had broken open his letters, and not forward them; saying, in the presence of my sister, that "he would have you up for it." Being now ready to start for Boston in search of his cousin, he ingeniously urged me and my sister to write to our sisters by him, requesting, at the same time, that we would not mention his being married, saying that as soon as he received his money of his cousin, he would return and take me and the children to New England to visit my relations, and then he would acknowledge our marriage; we complied, not suspecting he had any evil design; but I have since learned that he was to have been married to the daughter of one of my sisters the next day after his arrest, he having persuaded both my sister and her daughter to discontinue teaching school and return with him to Andalusia; what his intentions were respecting my sister and niece I know not, but surely he could not have tho't of bringing them to my house. Thus has this monster broken up the good order and peace, not only of my family, but of two of my sisters also.

Thus far, worthy Sir, have I made statements to you, humbly believing, and imploring with sighs and tears, that you, Sir, your kind mother, and sisters will take an interest in my unparalleled misfortunes!

Ah! methinks you will, in the goodness of your heart, extend the hand of humanity, to save, if possible, her, who has been so barbarously treated by him, who so unworthily claimed the name of a Mexican. With the best respects to your worthy mother and sisters, I subscribe myself, kind Sir, your deeply afflicted, your heart-broken friend,

Lucretia Chapman.

Col. Cuestor.

Col. Cuesta. I showed it to my sister, she said she never had told her that Mina was a rich man in his own country. She recollected that when they were speaking in the parlor about Mina, she told her that she was obliged to her for her kindness and hospitality to that person, supposing that he was a Mexican; she told Mrs. Chapman, that it was a pity to see a young man so unfortunate;

as he represented himself to be rich in his own country. Mrs. C. asked me to call on Mr. Campbell, her lawyer; I went to his house, with the intention to do all that I could in her favor; was informed that Mr. Campbell was not in town, and that Mr. Brown was her counsel; his fame had reached me; I therefore wrote her this letter:

Philadelphia, 10th Dec., 1831.

Mrs. Lucretia Chapman, Doylestown,

Madam,—A few days since I had the honor to receive your communication, dated Erie, November 29th. I have perused it with interest, and very much regret the critical and unfortunate business in which you appear to be involved. I hope and truly wish that you are, as you say, innocent: and that you may be acquitted and liberated soon. According to your wishes I have called myself at Mr. Campbell's, the lawyer, who happens to be at Harrisburg; and was informed by one of the family that he had nothing to do with your business; having seen by the public prints that you had a very respectable and able counsellor, Mr. D. P. Brown, I have not the least doubt but that gentleman alone will see justice done to you; therefore, Madam, I have the honor to be,

Very respectfully, your humble obt. servant,

Esto. Cuesta.

I put it in my pocket to post it when I was told there was a lady in the parlor who wished to see me; found Mrs. C. there, and some person with her; told her I had received her letter, and had the answer ready in my pocket; she read it; she went away.

This is all that ever passed between Mrs. C. and Mina and myself.

The *Counsel for the Prosecution* declined cross-examination.

Lucretia Chapman (sworn).

Mr. Ross. How old are you? Ten years old. Do you know what you have come here for? To swear to all I know. What will become of you if you do not tell the truth? I will be cast into hell-fire forever.

The COURT. Let her be sworn.

Lucretia. I was at our house in Andalusia with my parents, at the time that Mina came there. Just as the candles were beginning to be lighted up; he had black clothes on and knocked at the front door; Mr. Forman went to the door, and came back and told Pa there was a person there

who wished to see the gentleman of the house. Pa said, "it is a beggar, I suppose—tell him to come in." He came up to Pa and bowed, and solicited a night's lodging; he said he had been refused at the tavern below; Pa told him there was another tavern about half a mile above; Ma said the carpenters had gone, and he might stay all night; Pa said, "very well then." Lino then sat down; we were exercising on a grammar lesson, which Ma was explaining to us; after we got through, he told his story; Pa was sitting in the rocking chair nursing little John; he said, he came from Mexico, and his father was Governor of California; he started from that country with a Doctor, who had relieved his grandfather; went to France, and while there, the Doctor died suddenly in a church; went to his boarding house and threw his watch and bracelets into a large trunk which was lined with diamonds and which his father had given him when he left home; he put on a common suit of clothes, and threw him-

self on the bed, when the officers came in to seize the property; he said one of the trunks was his, but as he had on a common suit, they would not believe him, although his name was on the trunk. Two young ladies came in and told them that the trunk was his; they would not believe them, but took the trunk; the ladies gave him \$100 to return with; he heard he had a friend and relation in Boston, and as there was no ship going to sail for Mexico, he sailed for Boston; found his relation had been married, and had taken his wife to Mexico; heard there that he had a friend at Joseph Bonaparte's, and he was coming to see him, because he would help him; said he had walked from Philadelphia that day; the day but one after that, Ma and Mr. Ash went with him to Bonaparte's at Pa's request; a few days after, they went to Philadelphia with Mary Ann Palethorpe; Pa wrote a letter to his father, and Ma wrote one to his mother. On Sunday Ma went to Philadelphia with Lino, Mr. Ash, and William and stayed a day or two; don't recollect that my mother ever went to town with Lino, without another person. Lino came from town one day crying; Pa sat down beside him and tried to comfort him; repeating several scripture verses that he had committed to memory; do not remember my father ordering Mina a black suit; father and Mina were very friendly; never knew them to quarrel or disagree; on Friday evening Pa was taken sick; before that I one day went out to the barn; Lino stood crying; Pa was there and asked him what the matter was; he said

he was distressed because he did not know where he could make his home until he received letters and money from his father; Pa told him he could stay with him until that time; Lino said to me, as he was walking there he heard a voice saying, "Linetto, Linetto, Linetto!" It sounded like his mother's and youngest sister's voices; and in a short time he should hear of one of their deaths. Mother went with him to the tailor's and he came back with a black suit. My father took sick on Friday evening; at dinner that day we had veal, boiled pork and green peas; at supper Friday Pa ate very heartily of smearcase; Pa handed the pork to each one of them, said it was nice, and told them to try it; they all refused; woke up that night, a few minutes after Pa was taken sick; Ma went to get the peppermint and could not find it; father puked violently by spells that night; on Saturday Ma would have sent for the Doctor, but Pa said that the Doctor would only give him medicine, and he had cholera morbus drops in the house, which he would taken; Mina went on Sunday morning for Dr. Phillips; the Doctor came after breakfast; he ordered chicken soup, and said that Pa could take a little chicken, not much; Ma made him rice gruel; on Monday the chicken soup was made in the kitchen; Mary carried the soup up to my father; was with him at the time; Pa tasted the gizzard, but it was tough; he gave the rest to me and I ate it; Pa soaked a cracker in the soup and ate it with the chicken; he ate only a few spoonfuls of the soup, but very heartily of the chicken; ate

some of the soup myself; carried it down stairs, chicken and soup both, and set it on the kitchen table; the neck, wing, and part of the back of the chicken was left; Ma exclaimed, "How heartily your Pa has eaten of the chicken, and how little of the soup! I am afraid it will hurt him." Don't recollect that Pa was ever left alone when he was sick; Mary and I took turns attending on him while he was sick; Mr. Bishop attended part of the time; Ma also attended on him; there was a bell in the room; do not remember seeing Ann Bantom in my father's room; don't remember the day on which my father died.

Cross-examined. I have told this story to lawyer Brown and to Aunt Green—no one else; have not talked to my mother about it. The chicken was whole; Mary brought up a knife and fork with it; Pa cut it himself, while the rest of the family were at dinner. Mother was not in the room while Pa was eating; don't recollect who cooked the chicken; Father appeared rather better that morning; he was vomiting a little—not much; he was able to sit in the rocking chair while his bed was making; father got worse after eating the chicken; don't recollect seeing Mina that morning; when I carried down the soup, Mr. Forman, Mr. Ash, Mary Ann Palethorpe, Mary, and Ma were there; nobody was in the kitchen when I took it down; Ma was up there several times that day, part of the time waiting upon him, and part of the time sewing; father was very fond of pork; think he always ate it when it was on the table; don't recollect any quarrel be-

tween Pa and Ma about the carriage. Understood Pa died of cholera morbus; heard Dr. Phillips say so on Sunday; father made his bed sometimes with my help, when Ma was from home or unwell; never heard Ma say he must make it; Ma commonly made it. Ma told us she was going to New York, when she went to be married; she did not tell us what she was going for. After she came from Albany she talked of going to Mexico.

Levi V. Vandergrift. Chapmans were my nearest neighbors. Mrs. Chapman was the active person of the establishment; they lived in perfect harmony so far as my knowledge extends; I live on a farm; was there once during Mr. C.'s sickness; on Sunday afternoon before his death; was passing by; Mrs. C. hailed me; went in to see him; he told me he was better; said he called me to say that in case of his death he did not wish his brother John Chapman's family to be made acquainted with his sickness, or invited to his funeral; as the two families were at variance; he did this so that Mrs. C. should not be censured after his death; he had told Dr. Phillips the same, and had sent for Mr. Scheetz to tell him also.

Cross-examined. When I called to see Mr. C. could discover no change in him, except that he had more color in his cheeks than usual; he did not complain; he said he had had a severe attack of cholera morbus but was better; Mrs. C. was in the room—no one else. Mrs. C. is said to be an excellent teacher; never heard any one say they saw any impropriety in her; she was considered a moral woman; never

saw her and Lino riding out together.

Rev. George Scheetz. Am pastor of All Saints Church, about three miles from Andalusia. Mr. and Mrs. C. held a pew in that church. Mr. C. was occasionally there, and Mrs. C. very frequently; it was generally attended by her pupils; on the Sabbath on which Mr. C. was ill there was a note directed to me, left on the desk, requesting the prayers of the congregation to be made for Mr. Chapman, in consequence of his severe illness. It is not usual in our church to request the prayers of the congregation, except in cases of extreme illness; as to the unusual preservation of the body, there were three things that might have contributed to it; in the first place, the declivity of the ground; second, the nature of the soil, sandy and dry, and third, to which I attach the most importance, the depth of the grave; had found fault with our sexton for digging his graves too shallow; in consequence of this complaint he went into the opposite extreme and digged them unusually deep; this was the case in this instance; been at Mr. Chapman's occasionally; never saw any thing that gave me reason to suspect the want of harmony in the family.

Cross-examined. The note left on my desk was signed by Lucretia Chapman; cannot say I have seen Mr. and Mrs. C. together at church since Mina came there; cannot say whether they lived harmoniously after that time; at church after the funeral she was dressed in mourning; she appeared much distressed. Mrs. C. communed in the church after

her husband's death; her children and pupils were found well instructed in the catechism.

Joseph Magoffin. I knew Mr. C. and Mrs. C. in 1818, when they were married; was his first pupil; had a bad impediment in my speech at that time; went to him to be cured; remained under his care about a year; her maiden name was Winslow; they lived harmoniously together; her general character was good; heard she had a high temper, but I never saw any thing of it; they were both highly moral; she was the active personage of the establishment.

William M. Gouge. Was well acquainted with Mr. and Mrs. C. I never saw an impropriety in Mrs. C. Her repute was good, except that I heard she was passionate; they lived harmoniously.

Henry Korn. Was acquainted with Mr. and Mrs. C.; knew them intimately; my daughter was a pupil of theirs for six months; Mrs. C. seemed to be the active one of the firm. Her character was more than moral; thought they were a very religious family; they lived more harmoniously together than people usually do.

Anthony M. Buckley. Was a pupil at the Chapman school; never observed any thing but the most perfect harmony; never heard her moral character impeached.

Cross-examined. Heard her character impeached on account of ill temper.

Francis C. Labbe. Knew Mrs. Chapman before she was married, when she was Miss Winslow; have been at their house frequently; taught dancing in their school for four years; they

lived very happily together; her character is good.

Joseph Dixon. Have known Mrs. C. 13 years; knew her husband; three of my daughters were pupils; they lived in harmony as far as I know; her general character was good.

William Duane. Am an alderman of the city of Philadelphia; became acquainted with Mr. and Mrs. C. in 1826 and have known them ever since; never saw any thing but the utmost harmony and cordiality; they were very respectful toward each other, and there was always a sympathetic kindness between them; she held, as well as himself, a highly respectable character, and was entirely a lady in her deportment; she always appeared to be the most active personage of that establishment.

February 24.

Jane Vallance. Have known Mr. and Mrs. C. for many years; my sister and I were pupils of theirs; considered Mrs. C.'s moral character good before this affair.

Catherine Vallance. My sisters were pupils of Mrs. C.; the general character of Mrs. C. was very good.

William Shaw. Have known her 19 years, but never visited her house since her marriage; her general character was good.

Eliza Vandegrift. Have known Mrs. C. ever since she lived in our neighborhood; were near neighbors and interchanged visits with each other; have been at her house for a week at a time; Mr. and Mrs. C. appeared to live very agreeably together; her general moral character was good, up to the time of this disturbance; never observed a want of

kindness between them; have been at the house since Mina came there.

Cross-examined. Took tea with Mrs. C. after the funeral; I did not observe any thing peculiar in her conduct; she was in the room with Mina; don't think she appeared to be sad; she told me that Mina had a fit after their return from the funeral and that he was in bed; believe she went to see him.

William Vansant. Have known Mr. and Mrs. C. five years; was a pupil of theirs; they lived in Pine street the first time I was with them; the second time in Andalusia; Mrs. C. was the active person in the establishment; I never saw anything unkind in the conduct of Mrs. C. towards Mr. C. They lived, generally, harmoniously; her general moral character was very good; we had prayers and reading in the mornings.

Cross-examined. It has been two years since I was at school; have only seen her twice since that time.

Hetty G. Dillingham, Mercy Baxter and Louisa Baker testified in the same way.

Ellenor Boutcher (recalled). The chicken was sold on Sunday to Mr. C., about 11 o'clock; don't recollect any thing about the death of the chickens, nor when they died; never had ducks to die so before. My husband said he thought the ducks were poisoned; did not think any one would poison them; there had been a complaint of my fowls running over there; have never known ducks to die as these died.

Levi D. Vandergrift (recalled). Last spring a year had a flock of ducks, and a mason building a

platform: those ducks came and fed of the lime water, and all died but one, in the course of 12 hours; think there were masons or carpenters at Mr. C.'s in the month of June.

John A. Hellings. Had, about four years ago, upwards of sixty ducks, of various sizes; we lost them all in the course of 48 hours.

Cross-examined. We laid the death of the ducks to salt pickle, and found salt in their craws; have known them very frequently in wet weather to fall over.

Sarah Gando. Have lived 20 years in the neighborhood of Mr. C.'s residence; have occasionally stayed at her house; Mr. and Mrs. C. lived harmoniously; never saw Mina, and don't know that I was there while he was there; Mrs. C. was the active personage of the house; before this disturbance I never heard any thing bad of Mrs. C. They had family prayers twice a day; was at Mrs. W. C.'s at the time his brother died; he told me he thought he was treated very unkindly by his brother's folks—they did not permit him to see him during his sickness.

John Thompson. Was three months at Mr. and Mrs. C.'s school; they lived harmoniously, as far as I know; can't say what was Mrs. C.'s general character before this circumstance.

Willis H. Blayne (for the prosecution). Am acquainted

with the general character of Mrs. C. From 1818 to 1829, I considered her character good; since then I have considered it bad—gradually getting worse; became a police officer in 1829.

Cross-examined. My sister has taught music in her seminary for several years; have said that if the prosecution expected me to give her a bad character. they would be mistaken; that is, to my personal knowledge, I have never seen any thing but what was right; have visited at the house of Mr. and Mrs. C.; they lived very happily together—I never heard any thing to the contrary. When I speak of her general character, I speak of police report. The letter that was sent from Washington, written to Mina, was what first induced me to move in it; persevered more strongly in it, in consequence of some matters I had heard of Mrs. C.'s character, which I heard from the police.

Mr. Ross objected to any further examination upon this subject.

To the Court. I never heard any thing against her, except from the police. If I were to find stolen goods in a person's house, or if I knew that counterfeiters had been taken in that house, would say the owner of the house had a bad police character.

MR. REED, FOR THE COMMONWEALTH.

Mr. Reed: Gentlemen of the Jury—In submitting this case to you on the part of the Commonwealth there are one or two matters of preliminary consideration to which it is necessary to call your attention. The charge made in this indictment

is distinguished by marked peculiarities, which, as I shall have occasion to show the Court, have an important practical operation on the decision you are to make, and the mode in which you are to arrive at a result. Murder by poison is an extraordinary crime in point of novelty—it is so also in point of judicial operation. If you were now trying a case of murder by violence in one of its usual forms, there would be various and complex questions presented to you, all of which you would have to determine. You would not only have, from the evidence, to infer the fact of killing, but you would have to infer the motive which instigated the prisoner to the commission of the crime, and making the double inference you would be obliged to graduate the offense on the scale which the peculiar law of the land has prepared. But in a case of murder by poison, where, as in this case, there is no allegation of mistake, the only question for the jury is a question of fact. If the character of the defense puts at issue the fact of poisoning, it is of course the exclusive issue. Murder in the first degree, by our statute, is “murder by poison, lying in wait, or any other kind of wilful and deliberate killing;” and the law is, that in all cases where there may be doubt as to the motive, the prosecution must show that it is wilful and deliberate. Not so in the two specified instances where the act implies the motive. If we prove the poisoning, we prove the malice, unless by the admission of the fact and the allegation of mistake, the question is made one of intention, when, as in other cases of doubtful motive, the burden of proof falls on the Commonwealth. There is no such issue tendered to us here. The election of the prisoner is made. We are to satisfy you simply that fatal poison was administered by this prisoner, and if we shall be able to do so, the matter of motive is yielded to us. The allegation on each side is then distinct and specific, and the question for your decision is simple and well defined; did the prisoner administer the poison to her deceased husband as laid in this indictment? If she did, it not being pretended to be done by mistake, it not being denied to be done wilfully, she must be convicted. If, on the other hand, you believe he

came to his death without any agency on her part, then she must be acquitted.

As a consequence of this, you will remember that the guilt of this prisoner, if it exist at all, admits of no gradation. I mention it as matter for serious consideration, that in deciding this issue between the Commonwealth and the prisoner, there is no middle course for you to pursue, and you must decide between the deep guilt charged in this indictment and the perfect innocence alleged in the prisoner's plea. There is no murder in the second degree, no manslaughter, no other of the kinds of criminal homicide known to the law on which you can fall back. I have no idea, Gentlemen of the Jury, that, even if you had the opportunity, you would shrink from your duty, be it never so painful; for I have seen enough since this cause commenced, to satisfy me fully, not only of your intelligence, but of your firmness and your determined sense of duty, but I refer to this peculiarity of the crime charged in this indictment for another purpose. There being under this indictment no alternative to guilt, actual and technical, but innocence, pure, unblemished, untainted innocence, it is immaterial in which form we present the question: Is the prisoner innocent or is she guilty? If she is not guilty, she is perfectly innocent. If not wholly innocent, she is guilty to the full extent of the dark and ghastly crime laid in this indictment, and you, exercising your best and most dispassionate reason, are to say whether this grave accusation, deliberately and solemnly made, is true or false, and whether the stains which have been fixed on the character of this prisoner are to be removed, and her reputation is to be left, as your acquittal will leave it, without a blemish. Let me not be misunderstood. In presenting this question between perfect guilt and perfect innocence, I fully realize the limits within which inquiry must be restricted. I have no wish, even if I had the right, to open the record of the prisoner's life to ask you to decide merits unconnected with the issue before us. If we should travel beyond this line, it will only be on the track of character, which the prisoner herself has pointed out to us. Even the dark catalogue of

crime, which the few weeks that preceded and followed the catastrophe at Andalusia, presented, except as illustrating the probability of the commission of the final act, is no concern of ours. It is not a conspiracy to cheat that we are trying now. It is not the violation of the right of property—it is not hourly, daily, habitual adultery—or shameless prostitution, that we are trying. If we were, judgment would sooner have been pronounced, and we should be spared the pain of listening to the oft-told tale of the inefficacy of circumstantial evidence. It is a well defined charge of a specific offense, of which, on the testimony now adduced, we ask you to pronounce this prisoner guilty.

My colleague told you in opening this case, on the part of the Commonwealth, what we expected to prove. It now becomes my duty, in technical language, to sum up the evidence, or in other words, to tell you what we think we have proved. In doing so, it is my intention to present such a narrative as will recall to the mind of the Court and Jury, all the material facts of the case, and place before them, in a condensed form, the amount of the testimony we have submitted. I wish to be considered as of course under the correction of the counsel and the Court, and as being actuated by no feeling but a sincere wish to illustrate the truth, and to reach the ends of justice. Should I fall into error, it will be purely involuntary, and I ask it as a matter of justice to be at once set right.

This case involves the two questions, whether, in the first place, Mr. Chapman died of poison; and if he did, whether the prisoner, as a principal, had any agency in his death. They are perfectly distinct questions if the first be decided in the negative, but far from being so in consequence of the connection of the evidence on the one point with that on the other, if an affirmative decision be made as to the fact of poisoning. In relation then to the preliminary point, I must be understood as denying emphatically that our reliance is on this, or on that isolated matter of evidence, and as entirely disclaiming anything like sole dependence on what is called scientific evidence. We rest our expectation of bringing you

to a conviction that the deceased came to his death by an unnatural process on the accumulation of results of very various kinds. Such and so strong are those circumstances leading to this conclusion, that the prosecution might safely abandon all their scientific testimony, and if we were disposed to yield this part of our case up to the consuming wrath of the counsel for the prisoner, we might securely do so. What the effect of that portion of our evidence, however, is, how corroborative it is in every particular, I propose presently to show. What I mean now is to disclaim the idea that it is our sole or even our principal support on this part of the case, and to resist any dexterous attempt to make us appear to depend exclusively on any single portion of the testimony, be it scientific or not.

The great leading circumstance in this inquiry into the cause of Mr. Chapman's death, is, that on the day before he we taken ill, an individual living in his house, on terms of familiarity and confidence, purchased, under a false pretext, a quantity of arsenic at a drug store in Philadelphia. What the relation of this dealer in poisons was to the prisoner, and what light this circumstance throws on the alleged concert of the parties, are questions which it is not my intention to meddle with now. Again on a day subsequent to that on which the poison was purchased, and on the day when it is said to have been administered, a number of poultry of different kinds died suddenly, whilst feeding within the premises of the deceased, while none of those which were prevented from having access to the same place were affected. I certainly do not give to this fact any disproportionate importance when I refer to it merely as one of the items constituting the aggregate on which we rely. By itself it might merit some of the ridicule which doubtless will be thrown on it. In connection, however, with other less ridiculous matters, it rises beyond the low range of sneer and sarcasm, and acquires an importance which I believe has already been realized. That young ducks, such as these are described to have been, should die suddenly and inexplicably, and yet without the agency of poison, I find is common, and is an

event with which every farmer is familiar. That chickens should suddenly drop down and die without a visible cause, is not, it is conceded, quite so usual. But that of all the poultry of Mr. Boucher, the witness who proves the fact, great and small, chickens and ducks, only those should die which had been within premises that were infected by the presence of a poisonous material, and that too on the day when it is clearly proved poison was in circulation, are matters of coincidence, that are worthy of consideration on your part, and explanation on the part of the counsel, or at least something more than the sarcastic sneer that has with difficulty been repressed whenever they have been mentioned. I mention it as a circumstance of no trifling moment, tending to show that the poison which was purchased by Mina, at Mr. Durand's store in Philadelphia, on or before the 16th of June, had, on Tuesday, the 21st, found its way to Andalusia. I think I ask for it no higher import than it deserves.

Keeping these facts distinctly in view, especially that of the purchase of the poison, I will now ask your attention to the medical and scientific evidence. And here, gentlemen, I feel the embarrassment which I hope I share with you, arising from the consciousness that I am walking in what are to us, unaccustomed paths. I feel that I am discussing subjects of which I cannot be supposed to have accurate technical knowledge. We are none of us either chemists, or pathologists, or anatomists. The officers of the prosecution, furious as may have been their zeal in this cause of prejudice, have not had the advantages of instruction such as our friends on the other side appear to have enjoyed. But, sir, thanks to the simplicity of science now, this part of the inquiry requires no special illumination. There is nothing which, on principles of common sense, may not be easily understood and as easily explained. With the details of experimental processes I do not know that we shall have to meddle. It is to simple and perfectly intelligible results that I shall ask your attention.

The truths of science are eternal and immutable. The principles which are the objects of scientific pursuit never alter. The processes, and the modes of operation by which those

principles and truths are to be ascertained, vary, if not with the day and the hour, at least with the ages and generations of philosophy. Such has been the case with the science of toxicology, and especially with that branch of it which relates to the vexed question, what amount of evidence will justify a belief of the presence of poison. Today caution, and tomorrow carelessness, may sway the mind. One amount of evidence was requisite yesterday, and another, either greater or less, will be required tomorrow. In the well-known cases of Miss Blandy, and Kairn, and Ogilvie, cases which recent science might repudiate, but which are full of application here, the amount of evidence to make out the actual presence of poisonous material, would in later times be regarded as utterly inadequate. Recognizing what is contended for here by the prisoner's counsel, the fallacy of any portion of evidence short of that of reduction, there is really no justification of these convictions. They were judicial murders. Yet I take it to be unquestionable that the fact of poisoning in each of those cases was made out to the satisfaction of every reasonable mind, although the scientific certainty was not attained.

To the age of imperfect knowledge, such as it was when these trials occurred, succeeded one of far greater caution, as well as far greater skill. A process had been devised, perhaps as a matter of ingenious science as beautiful and perfect as any in the circle of discoveries, by which, from the decaying structures of the animal tissues, however much disguised by organic matter, the most minute portion of metallic poison could be sublimed, and in spite of any obstacle which disease and decay might interpose, the subtle and fatal material could be reproduced. In the triumph of this discovery, all previous modes of investigation were at once discarded. All and each were pronounced fallacious. Observation of symptoms was worthless—examination after death was deceptive—chemical reagents sank from their rank as detectors to become mere purblind guides, and then the doctrine was exclusive, for which the counsel for the prisoners and their witnesses so zealously contend now, that unless the

mineral poison is reproduced, there is no evidence of the existence of the poison. It was under the influence of this opinion that the conviction of Kesler, in the State of New York, which has been read, was so vehemently denounced. But it was in consequence of the incalculation of other, and I think safer and sounder doctrine, that the punishment of that criminal was advocated and sustained. That the opinion that reproduction is the only evidence of poison is not the received doctrine of the present day, I will undertake to show presently, when I come to speak of the evidence on this point on the part of the prisoner. I admit it to be the best evidence.

I am willing to go further than I suppose will be required of me, and to concede not only that this test or that test, I do not use the word in its technical acceptation, is inconclusive; but to deny that even the reproduction of the arsenic in the form of a metallic ring is conclusive for the purpose of evidence here. If a metallic ring were produced before you and submitted for your inspection, would it be in your estimation, unused as you necessarily are to such examinations, conclusive? Certainly not. You could not pretend to say that because you saw something glittering on the inner surface of a glass tube, that it was arsenic, or that arsenic had been in the place it came from. Still further, if individuals supposed to be competent judges, were to pronounce that ring to be metallic arsenic, would it be conclusive? As certainly not. You would then be told that an arsenical ring, like a naliaceous odor, might be mistaken, that the eye might be deceived; and witnesses would be examined before you to show that errors on this point too had been, and might be committed. In short, sir, science, yields nothing that can be considered conclusive for the purposes of criminal justice. Reproduction of arsenic, had it been effected here, would only have added a link to what was strong enough already, and you would have been told then, as I believe you will be told now, that if from the accumulation of results, symptoms, post mortem appearances, however partially examined, chemical experiments, however imperfectly performed, aliaceous smell, or other things, you are satisfied that the individual

died of poison, it is abundantly sufficient. I deny that any one chemical result would be conclusive, or is essential.

I have said, and now repeat, that the cumulative evidence on which this part rests, arises from a state of facts which can be accounted for on no other principle than the presence and action of a poison. What is that evidence? An individual in the house of the deceased purchases a quantity of a deadly poison. The death is caused by a sudden, inexplicable, and violent disease, resembling, to use no stronger word, in its character the disease produced by that very poison. After a lapse of time, the body is disinterred, and presents appearances corresponding with those said to be produced by that poison. A chemical examination of a portion of the body is made, and results, whether faint or decided it is not material now to inquire, are attained, indicating the presence of the same poison. And in addition to this, we have the opinions of skillful physicians and chemists, reluctantly and deliberately expressed, confirming fully the views which we ask you to take. In this chain of evidence there is all that skepticism can ask, and far more than unbiased reason will require.

First, then, as to the symptoms—are they not the symptoms of poisoning by arsenic? Precisely so. I am of course not to be understood as saying that every symptom of arsenical poison was exhibited here. No two cases of the kind corresponding in detail, no one case ever has occurred in which all observed symptoms appeared. But what I mean to say is, that there was no symptom exhibited in the case of Mr. Chapman, but was a symptom of disease caused by this species of poison. The Jury will probably recollect the symptoms as detailed by several of the witnesses, and though reluctant to trouble them with reading authorities, I will select from an approved one the best summary of the general symptoms I have been able to find. It will then be for them to make the requisite comparison. I read from *Christison*, 216:

“Soon after the sickness has begun, or about the same time, the region of the stomach feels painful, the pain being commonly of a burning kind. Violent fits of vomiting and retching then speedily

ensue, especially when drink is taken. There is often, also, a sense of dryness, heat and tightness in the throat, creating an incessant desire to drink; and this affection of the throat often precedes the vomiting. Occasionally it is altogether wanting, at other times so severe as to be attended with fits of suffocation, and convulsive vomiting at the sight of fluids. Hoarseness and difficulty of speech are commonly combined with it. The matter vomited, as in other cases of long continued vomiting, is greenish or yellowish; but sometimes it is streaked or mixed with blood, particularly when the case lasts longer than a day. In no long time after the first illness, diarrhoea generally makes its appearance, but not always. . . . In other cases the great intestines are hardly affected at all. About this time the pain in the pit of the stomach is excruciating, and is often likened by the sufferer to a fire burning within him. The general system always sympathizes acutely with the local derangement. The pulse commonly becomes very small, feeble, and rapid, soon after the vomiting sets in; and in no long time it is often imperceptible. This state of the pulse is naturally attended with great coldness, clammy sweats, and even lividity of the feet and hands. The countenance is commonly collapsed from an early period, and almost always expressive of great torture and extreme anxiety, the eyes are red and sparkling," etc.

Now what were the symptoms here, and were they not all, with the exception of deafness, which may be referred to paralysis, identical with the symptoms which are exhibited in cases of arsenical poisoning? Anne Bantom, Fanning, and Boutcher, who saw the deceased at different times from Monday till his death, speak of him as vomiting, or rather attempting constantly to vomit—they describe spells of agony of this kind of considerable duration in which he seemed to suffer intensely—the attempts to vomit seemed to increase when anything in the shape of liquid was given—he had violent spells of restlessness—he complained of misery at his stomach—he said most of his sickness was at his stomach—he had a burning heat at his stomach, which appeared to him just like fire. Dr. Knight, who saw him for the first time on Tuesday evening, describes him as suffering under a burning pain at the pit of the stomach, of which the action was violent—considerable vomiting and purging—extremities cold as far as the knees—mouth dry and considerable thirst—at times, toward the end, delirious without fever—pulse small and tremulous, and his countenance evincing the greatest anxiety. Dr. Phillips, when he saw Mr. Chapman on

Wednesday, found him, as he has told you, *in articulo mortis*. His extremities were cold, clammy, and shrunken, his skin collapsed—his hearing gone, with which the witness was particularly struck—the countenance evinced a good deal of anxiety, and he seemed desirous to know whether he should or should not recover—his senses were much impaired—and a short time before death there was an involuntary discharge per anum of a bloody serum.

These are the symptoms of this case of violent disease and death, and without now referring to the opinions on them, put in evidence before you, I ask a comparison between them and the symptoms of arsenical poison given in the authority I have cited, as well as so satisfactorily stated by Dr. Coates, when examined in this cause. That they are not exclusively symptoms of poisoning I might concede. It is quite immaterial for the purpose of my argument, whether they are or are not. They are symptoms analogous, strictly so, to those produced by poison, and whether fallacious or not, so far, they are important.

Of the appearances after death I may say the same thing that I have said of the symptoms during life. They are precisely such as the action of this mineral poison produces. Before interment there were three very significant phenomena in the body which are distinctly in evidence before you. I refer to the livid spots, the preternatural rigidity of the muscles, and to what may relate to the very period of dissolution, the bloody discharge per anum. To the latter, as indicative of a local inflammation of the rectum, known to be a distinctive symptom of arsenical diseases, considerable importance has been attached during the examination of the witnesses. The existence of the discharge itself has been doubted, but is, I think beyond a question. Dr. Phillips distinctly, and of his own accord, specified it as one of the remarkable symptoms of the case, and one of those for which he was unable to account. The other witnesses, not professional men, who were present, if they do not recollect, certainly do not disprove it. The peculiar pale color and healthy appearance of the larger intestines, as proved by Dr. Hopkinson and

Dr. Coates, show that this discharge, if it existed, resulted from a local inflammation. Dr. Knight and two other witnesses, prove that immediately after Mr. C.'s death, livid or rather purple spots, appeared on different parts of the face and head—that the lips and nails assumed a dark blue color, and that there was decided and remarkable discoloration behind the ears, over and below the eyes, and in other places. Mr. Boucher, a witness who states that he has been at different times in his life in the habit of laying out dead bodies, expressly proves to you that within a time that appeared to him unusually short, according to the evidence in less than two hours, the muscles of the deceased had become singularly rigid. I need not trouble you with a reference to my notes on this point. Mr. Chapman died between three and four o'clock a. m., the days being then at their greatest length, and it was about daylight that the body was laid out, and the rigidity observed by the witness.

Among the authorities put in evidence this morning by the counsel for the prisoner, there is one to which I will refer the Court on this last point. I refer to Jaeger's *Inaugural Discourse on the Effects of Arsenic*, referred to by Mr. McCall, where I find these appearances mentioned as characteristic. I read but a sentence or two:

"In whatever way arsenic was applied, Dr. Jaeger observed no change upon the skin except the paleness and some blue spots nine hours after death, upon the girl already mentioned" (a girl of twelve years of age, poisoned by a solution of the black oxide of arsenic).

"The inflammatory appearances continue, though in a less degree, through the small to the vicinity of the large intestines, which is generally free from them, and only contains an increased quantity of effused mucus; but the rectum again is inflamed, and its inner coat swollen and softened."

"The voluntary muscles were constantly and universally rigid; the limbs sometimes bent, but generally extended."

"In three cases the body is mentioned as having been discolored or marked with livid spots; in one even blistered; and one was highly fetid." *Edinburgh Med. Journal*, 1811, p. 80.

I come now, Gentlemen of the Jury, to the appearances on dissection. I regret that I am compelled to dwell upon these details. It is, however, the more necessary, as this part of

our case has been made the object of the most vehement attack. Something, too, much indeed, is due to the witnesses who have been examined on this subject. The examination made by Dr. Hopkinson has been decried as a partial and an imperfect one. I do not know that it is necessary for his vindication that I should deny that it was so. He himself, with a candor and frankness that I am sure was properly estimated by all who listened to him, admitted that it was so. But what then? Are the morbid and characteristic appearances which were exhibited, to be disregarded, because every fibre of the dead body is not laid open before you? Is that which is seen and known to be treated as worthless, because all is not seen and known? Is active inflammation of the stomach and alimentary canal, to pass for a healthy appearance, because the brain, and the heart, and the lungs, were not inspected, too? Suppose for a moment that the brain, or the heart, or the lungs, or any part of the body that was not examined, had presented traces of the operation of chronic disease. Would the appearances that were exhibited, illustrated as they are by the symptoms, be less significant? Unquestionably not. Would congestion of the brain, or ossification of the heart, or the rupture of a blood-vessel, account for symptoms and appearances like these? I speak with diffidence and under correction, but I should think they would not. We have the greatest reason to regret that the examination terminated where it did. Discoveries might have been made which would have strengthened, none could have occurred that would have weakened the case of the prosecution. So far, however, as it goes, it is perfectly satisfactory.

Connected, however, with this point, it is proper to refer to the remarkable preservation of the body of the deceased. It is in evidence that Dr. Hopkinson's examination did not take place till exactly three months after interment, yet after this lapse of time, contrary to experience, all the diseased parts of the body are found in a state of preservation, while the extremities, which are the portions least liable to the effects of the alleged disease, are discovered in a state of ordinary decay. Of every professional witness that was exam-

ined, I asked the question as to the comparative influence of decay on healthy and diseased parts of the body, and from all I received the answer I anticipated, that diseased portions in ordinary cases putrefy first. The only exception to this rule that we have suggested to us is the case of inflammation produced by the action of arsenic. That material is said by all the witnesses to be believed to have preservative powers. This is another coincidence, to be received for what it is worth, of which we claim the benefit. An attempt has been made to attribute the unusual preservation of this body to natural causes, and more than one witness has been examined here to show, what no one, I believe, dreamed of disputing, that the character of the soil and other circumstances will promote or retard decay. It is remarkable, however, that though we have been told a great deal here about the probable character of the soil seven or eight feet beneath the surface, in All-Saint's church yard—of its dryness—its preservative tendency, and so forth, that the fact is clearly proved by the physicians who disinterred the body (I refer particularly to the evidence of Dr. Coates), that there was actual moisture in the grave, and that the head, which was exposed to its action, was in an advanced stage of putrefaction.

I do not know that it is necessary for me to meddle with what is represented to be the disputed point of the antiseptic powers of arsenic. It is no immaterial concession to us that it is a disputed point. There are, however, one or two points of detail connected with this supposed preservative process, to which it is not altogether immaterial to call the attention of the jury, bearing in mind throughout, that the argument now offered depends on an accumulation of analogies between this case and others of admitted poisoning. Independently of the general state of preservation, there were in it other peculiar appearances not undeserving a passing remark. Dr. Hopkinson, whose experience as a demonstrator of anatomy is very great, and who has, as he told us, dissected several hundred subjects, was struck with the remarkable firmness of texture and dryness in the case of Mr. Chap-

man. He says, in his evidence, that portions of the viscera seemed disposed rather to dry than to putrefy, and that it was as if it had been hung up to dry. He adds, distinctly, that he had never observed such dryness before. In the investigations that have been made abroad, in relation to the antiseptic properties of this mineral poison, this appearance of dryness has invariably been observed.

As properly belonging to this part of the evidence, and as forming a part of this chapter of coincidences, I will here refer to the only remaining circumstance of this post mortem examination. It furnished an analogy which was casually mentioned by the witness, but which seems to me, on the score of its simplicity alone, to be not unworthy consideration. The Jury will recollect what I refer to, when I mention the resemblance of the odor proceeding from the detached portion of Mr. Chapman's body, and that produced by the stomach and intestine from the almshouse, into which Dr. Mitchell had injected a quantity of Fowler's solution. Both Dr. Hopkinson and Dr. Mitchell observed a peculiar smell in this case, which neither recollected having met with before, and which, you will remember, was compared by the former, to that of "Scotch herring." Dr. Mitchell having procured a portion of a stomach and intestine for the purpose of forming some analogous experiments, injected a quantity of arsenic, and left it, in consequence of other engagements, for a month or two in his laboratory. On examining it after this interval, he found it had not putrefied, and that it yielded the same peculiar smell he had observed in Mr. Chapman's stomach—a smell which the Doctor described as new to him, and which he never remembers to have met with but in these two cases.

I come now to the only remaining set of facts in evidence on this part of the case. I mean the results of the chemical analysis by Dr. Mitchell and Mr. Clemson. I have already expressed my views incidentally in relation to the evidence which such inquiries ought to furnish, and how inconclusive, in the strict sense of the word, they must be even when most successful. In the same spirit I am disposed, following the

example of the witnesses themselves, to concede that, with a single exception, the chemical results were unsatisfactory. Certainly, no visible reproduction of the arsenic took place. I am not altogether satisfied with the peremptory abandonment of the preliminary experiments by the witnesses who made them, or the unqualified denunciation of them by the solitary witness for the prisoner, who, with characteristic quickness, saw their utter failure at a glance. The chemical reagents, if they gave no strictly characteristic precipitates, at least produced tints in the suspected fluid, not dissimilar from those which were looked for. But as they are given up on all hands, I yield them too; and giving to the prisoner the benefit of all these failures and defects, I proceed to that part of the analysis which did not fail. I mean the production of what is called the aliaceous smell. And here too I am disposed to give the counsel the advantage of the partial concession that this alone is not a sufficient indication of the presence of arsenic. I speak now as a lawyer judging of the worth of evidence, not as a scientific man determining what, in comparison with the solemn issue of this inquiry, may be called an abstraction. But it is not alone that we offer this result for your consideration. It is in conjunction with others far more essential that we offer it. And it is in conjunction with other matters of evidence in this case, of more apparent weight, that, if I mistake not, it will acquire an importance, in a scientific point of view, which perhaps, as a test, it never had before. As presented to you it involves but one simple question, whether there is or is not a distinctive smell in the fumes of arsenic, and whether the witnesses were or could be mistaken in it. Mr. Clemson, who first perceived it while attempting the process of reduction, thinks he cannot be mistaken in it. Dr. Mitchell, who also perceived it, tells you he has never been able to imitate it, and that every substance which is said to evolve it, produces what to his sense is widely dissimilar. He told you too what was the ground of his confidence in Mr. Clemson's accuracy on this point, and narrated the manner in which he had tested it. I need not refer you more minutely to what was said by the witnesses on this head,

nor need I pay to the gentleman on whose evidence this part of the case rests, a tribute of praise, which, as from me, to him would be of little value. Inconclusive as this odor recognized by Mr. Clemson has been said to be in itself, I have referred to it, and rely on it now, as forming no insignificant element in that accumulation of evidence on which this case depends. If the manipulation had been perfect—if the chemical reagents had thrown down precipitates pronounced to be perfectly and strictly characteristic by all who saw them, Dr. Togno, inclusive, it would undoubtedly have been better, particularly as a matter of science. If the tube which Mr. Clemson held had not been broken by the heat of the spirit lamp, and the volatilized metal, instead of escaping through the apartment, had been condensed in a ring of metal on the tube, and that ring had in its turn been tested, it would have been better still. But in the absence of all these desirable, though, as I again assert, not essential results, we rely, and rely securely, on the result which was attained, and which, corroborated as it is by every other circumstance in this case, is all-important and amply sufficient. Were I disposed to depart from the line I have prescribed to myself, I might here notice the manner in which the counsel of the prisoner have attempted to invalidate this part of the evidence, by the production of a single scientific witness before this Court. I waive it for the present. When I come to notice that gentleman's evidence in its appropriate place, I will endeavor to pay to it, too, the tribute it deserves.

The Commonwealth has not, however, rested its case here. In addition to these facts and details, on which you are asked for yourselves to pronounce a judgment, we have put in evidence a series of medical and scientific opinions on the same state of facts which deserve, and I am sure, will receive great consideration at your hands. These, too, are opinions not only cautiously and deliberately formed, but most reluctantly expressed here. There are, on the part of the Commonwealth, no amateur witnesses. It is but justice to the gentlemen who have been examined on the part of the prosecution, to say, that they have come here only because they have been

compelled to do so under the process of this Court, and that the duties which they have so conscientiously performed, were wholly unsolicited by them. For the manner, the cautious and delicate manner, in which those duties were performed, I need only refer to your recollections. In those opinions thus given in evidence, it is most remarkable that there is no discrepancy. Some had fewer opportunities of observation than others. But all in language more or less distinct, unite in the result to which we ask you to come on all the evidence, that William Chapman died of poison.

The attending physicians considered it a case of mysterious disease. Dr. Phillips told you that at the time he was not able to account for the death, and that he is not able to do so now. He saw the deceased for the first time on Sunday, the 19th, and then regarded his indisposition as trifling. When he saw him next, however, on Wednesday, 22nd, to use his own words, he "was very much astonished" to find him literally in the agonies of death. Dr. Knight, who attended him from Tuesday till he died, says as distinctly, "he can on no known principle account for his death."

Dr. Hopkinson, the next medical witness that was called, says, that, in his opinion, founded on what he observed on the exhumation of the body, and from what he had heard of the symptoms, the deceased came to his death in consequence of an inflammation of the stomach, caused by the action of a violent substance such as an irritant poison. Dr. Coates, giving his reasons also in detail, arrives at the same result, and states to you his deliberate conviction, that he died by the action of a corrosive or irritant poison of an arsenical character, and on his cross-examination strengthened that opinion in a forcible manner, that none of us can have forgotten. While he admitted that it was possible the death was a natural one, he distinctly said the possibility was so slight as not to deserve examination, and that the proof of the presence of poison, independently of the chemical analysis, was the strongest possible proof the case admitted of. He added, that it was fully adequate to satisfy him as a med-

ical man in a case where life or death was involved in the result.

I cannot, gentlemen, close my remarks on this part of the evidence more appropriately, than by reading to you from my notes the answer given by the last medical witness (Dr. Mitchell) on the part of the prosecution, to the inquiry as to his opinion of the cause of Mr. C.'s death. Nor can I do that, without saying a single word in relation to the witness himself. What I say is not the mere language of friendly compliment, though I am happy to call the gentleman I refer to, one of my personal friends, but is a tribute of admiration, sincerely felt, and now most willingly expressed, for his testimony, both as to matter and manner, when examined at the bar of this Court. He came before this Court a reluctant witness. He came here, as was manifested by every word he uttered, peculiarly sensitive to the delicacy required from a mere witness to opinion. All he said was scrupulously weighed before it fell from his lips, and no opinion was uttered but was fully approved by his best judgment. Their Honors and you will, I am sure, never forget the nice sense of propriety, the refined delicacy which induced the witness almost peremptorily to decline answering a question from the Bench, because he seemed to fear that the answer might, in consequence of extrinsic circumstances, acquire a force with the Jury which, as a matter of science, he thought it really did not deserve. For myself I will say, that though I believed the answer to be material to the prosecution on this point of science, I had in common with the Judge who asked the question, too much respect for Dr. Mitchell's delicacy to press the inquiry. It was highly honorable to him, and if I mistake not, left an impression not easily to be effaced. Conscious as I am that I should injure the force of such testimony by any summary I could give, I will in conclusion here read that portion of Dr. Mitchell's evidence which relates to his opinion of the cause of Mr. Chapman's death. (*Mr. Reed* here read the testimony of Dr. Mitchell, concluding with the following declaration):—"After a careful and considerate view of the whole ground, I am unable to resist the conclu-

sion that William Chapman died because of the presence of arsenic in his stomach." "To this conclusion," adds the witness on his cross-examination, "I came most reluctantly."

Such, Gentlemen of the Jury, are the opinions which the policy of the law permits to be put in evidence before you. Such the opinions by which we ask you to be guided in forming your judgment of this part of the case. They are entitled on all accounts to high consideration. They are the opinions of skillful and experienced men. They are opinions deliberately and cautiously formed, and, as I have before said, most reluctantly expressed here. There is in them nothing of the quixotism of theory—not a taint of metaphysical and speculative paradox. There is none of the mystery of science about them. Plain and intelligible in themselves, they have been clearly and intelligibly stated to you. There is no variation or contradiction among them, and thus harmonious and consistent, are entitled to the consideration which I am sure, at your hands, they will receive.

But further than this, you will bear in mind distinctly that the opinions of the scientific witnesses for the Commonwealth are unimpeached. Yes, sir, with the exception of a single discrediting witness on the part of the prisoner, whose evidence, I will here examine, wholly unimpeached. But two medical witnesses have been produced on the side of the defense; but one of them has been examined in court. Of Dr. Bache's very cautious, and, as I sincerely believe, conscientious disposition, I shall only say, what I do say most emphatically, and subject to correction hereafter if I am in error, that in no single particular of fact or opinion does it discredit any of the witnesses for the Commonwealth. All that Dr. Bache says, is said with characteristic caution, and all may be safely admitted to be sound doctrine, without weakening in the slightest degree the evidence presented to you on the part of the prosecution. With this remark I dismiss it. Dr. Togno, however, the principal witness for the prisoner, has given far less pretending, and, if credible, far more important evidence. His hand seemed to be against every one, though I can assure him no hand has been willingly

raised against him. I have no recollection of any single point of agreement between him and any of the medical witnesses previously examined, and in this collision we have forced upon us the unpleasant duty, for which perhaps we are little qualified, of deciding who is right and who is wrong. I regret sensibly being obliged to say what may appear harsh and unkind of an individual, whom, like Dr. Togno, I have always met on the ground of courtesy and good will. But obtrusively adverse as his evidence has been, I have no alternative left to the utter abandonment of our own witnesses in the face of the Court and Jury, but plain speaking with regard to him. If Dr. Togno's scientific reputation is to fall a sacrifice, much as I may deplore it, the blame falls not on us. He is *felo de se*. If he has not actually inflicted the wound, he has supplied the weapon to adversaries whom duty makes unrelenting, and has pointed to the vital spot. He shall have the consolation of dying by his own sword. I have no right to say that this gentleman is a volunteer witness in this cause, because I presume the service of a subpoena can be regularly proved, nor am I disposed, even if his services and his stores of knowledge have been voluntarily tendered to the prisoner or his counsel, to take from him the credit of doing an unsolicited kindness to her or them. With his motives, whether chivalric or selfish, I have little concern. Of his conduct and his evidence I might say much more than I intend to say. He is a witness almost exclusively to opinion, and is produced with the avowed object of discrediting on every point the scientific opinions given by the Commonwealth's witnesses. I propose to judge him on his own evidence, and from his own authorities. If I can show to you a want of candor in his statement of what he actually saw, and positive ignorance on one of the most prominent points on which he proposed to have formed an opinion, I shall be satisfied. From his relation of what he saw in Dr. Mitchell's laboratory, it might be inferred that he took an active share, at least, in the inspection of the experimental processes which were in progress, and from what he told us of his examination of the stomach, which of his own accord he took from the jar where it

was deposited, we were originally left to believe that the opinions which he gave us as to its condition, were founded on minute and careful inspection. Now, was this really the fact? So far from taking part in the experiments, or being consulted about them, so entirely did his presence pass without observation, that Dr. Mitchell does not seem to have been aware of it, and Mr. Clemson, when asked by the counsel, expressly says he has no recollection of seeing Dr. Togno at any time during the experiments. The fact is, that but for the recollection of the witness himself, the memory of his agency and presence on that occasion would be among the things lost upon earth. Yet from the glimpses that he had, he presumes to form, and under oath to give, opinions in which the counsel for the prisoner will ask you to place unbounded confidence. He takes the stomach and intestines from the jar, containing, as he thinks, spirit of wine, a matter about which I am inclined to doubt, examines it during the few moments he was there and then comes before you with an opinion as to the character of the local disease which is intended to induce you actually to disbelieve that that viscus was the seat of inflammation at all. And so it might and would have operated had not, on his cross examination, the question been asked, I think by myself, "Would you, on so partial an examination as you made of that stomach, feel authorized to give an opinion which, as a man of science, you would wish to be depended on?" The witness was compelled to give the answer—"I would not." Yet was not his sage speculation as to the condition of the stomach, and his explanation of its peculiar appearance, paraded before you as a credible and serious doctrinal opinion? Was there any voluntary apology for haste? Was there any diffidence in its enunciation? So much for Dr. Togno's candor. I have but a word to say as to his scientific accuracy. Dr. Togno comes here as the partisan of doubt, and the model of cautious observation. He sees confusion where others see clearly. He is insensible to the distinctive character of this disease and that disease, between which others have no difficulty in discriminating. To his eye, symptoms show nothing, reagents

fail to convince him, pathology exhibits no adequate results. All to him is inadequate, and every word he uttered was meant to impair your confidence in the opinions of our witnesses, and to induce you to regard them as the careless results of imperfect and hasty examination. In his zeal in the cause of "reduction," all else was scorned. "If no arsenic is found"—I read his own words from my notes—"symptoms, post mortem examination, tests, all go for nothing. No poison, no poisoning, no cause, no effect." There is one source of uncertainty to which, were I disposed to be uncharitable, I might attribute all this confusion. I do not, however, I am sure, say too much, when I say that it becomes the advocate of skepticism like this, to be accurate in his premises. Conscious as I was, and as I am, that separately the chemical results in this case were unsatisfactory, I made it a point to ask each of the medical witnesses the question, whether cases of known poisoning had not occurred, where, in consequence of vomiting or other causes, no traces of arsenic were detected after death. From all, except Dr. Tongo, I received the reply I anticipated, that many such cases had occurred. His answer I do not complain of, as not being sufficiently explicit. It was abundantly positive and prompt in the negative. For the sake of precision, I will use the words of the witness as I took them down: "But one case that I know of is recorded of dying from arsenic, and no traces found after death, and it is not believed to be true. It is not believed by persons who cultivate medical jurisprudence. Orfila does not believe that case to be true. When a man dies from arsenic; arsenic is found. Christison also, in every instance, where he analyzed the stomach of a person dying from arsenic, found the arsenic by reduction." We are indebted to the witness for being thus distinct, and for directing us to the authorities on which he relies. Availing myself of his suggestion, I read from *Christison*, 49, and will especially ask the attention of the Court and Jury to it:

"The next point to be examined under the head of chemical evidence, relates to the causes which may remove the poison beyond the reach of the inspector. Although poison be not detected in the body

—the experimenter being supposed skillful, and the poison of a kind which is easily discovered—still, it must not be concluded from that fact alone, that poison has not been the cause of death. For it may have been all discharged by vomiting or purging; or it may have been all absorbed or decomposed. 1. It may have been discharged by vomiting and purging. Thus on the trial of George Thom for poisoning the Mitchells, held at Aberdeen, at the Autumn Circuit of 1821, it was clearly proved that the deceased had died of poisoning by arsenic; yet by a careful analysis none could be detected in the stomach or its contents; for the man lived seven days, and during all that time, labored under frequent vomiting. In a remarkable case related by Dr. Roget, arsenic could not be found in the matter vomited twenty-four hours after it had been swallowed; in another which I have described lately in a paper on arsenic, although the person lived only five hours, the whole arsenic I could detect in the tissue and contents of the stomach did not exceed the fifteenth part of a grain; and in an American journal there is a still more striking case of a grocer, who died eight hours after swallowing an ounce of arsenic, and in whose body none could be found by chemical analysis.”

In Orfila I find the following passage illustrative of Dr. Togno’s position: I read from Vol. I. 209, *Toxicologie Generale*:

“Before concluding all that relates to the chemical inquiries for the discovery of the presence of arsenic, we must observe, that after the death of an individual poisoned by this acid, we may not be able to show the existence of the poison, with whatever care the analysis of the contents of the stomach may be made. Messrs. Jones and Wikely mention a case in the London Medical Journal, of a young woman who died after having taken a quantity of arsenic mixed with salt. The stomach contained about half a pint of a brownish-red fluid; the mucous membrane was inflamed and injured, partially adhering to the other coats, and partially detached from them. The portion that adhered was of an ashy color, hard to the touch as if cauterized, and exhibited to the eye a white powder, which was nothing but salt. The œsophagus and mucous membrane of the intestines were inflamed; the rest of the viscera healthy. Every chemical experiment made in the hope of showing the existence of the poison, failed. It was evident that the patient, who had drunk plentifully of warm water, had vomited up all the arsenic. We are assured that all animals who have taken this poison dissolved in water, and who have had abundant vomiting before death, show no traces of it when the matter contained in the stomach is submitted to chemical analysis.”

With these “tests” of Dr. Togno’s scientific acquirements furnished by himself, and which I am sure he cannot complain of my using, I leave his evidence to have with you all the efficacy it deserves.

This, then, is the accumulation of testimony on which the Commonwealth asks you to believe that William Chapman died of poison, as alleged in this indictment. If, with this amount of evidence, we have, to use the triumphant language of the counsel (Mr. McCall), failed to satisfy you on this preliminary position, then the charge that this prisoner had any agency in that death, falls to the ground. But if evidence such as this is to be treated as inadequate—if all the testimony adduced is worthless and inconclusive, because an imaginary point is not attained, where certainty is supposed to dwell—if the cravings of doubt are still unsatisfied, then, Sir, under this new theory of evidence, we may despair of proving anything hereafter. The halls of science and of justice may be closed. The career of useful discovery, of all inquiry after hidden truth, will be cut short. We have been told that “the native hue of resolution is sicklied o’er by the pale cast of thought.” Sir, it is to the diseased vision of sickly doubt, such as is encouraged here, that the plainest objects are confused and indistinct. If evidence like this is inadequate, I repeat it, the march of truth is at an end, and we may as well at once resolve ourselves into that misty state of incredulity which sees nothing, feels nothing, believes nothing. A failure! The Commonwealth has failed to make out a case of poisoning! The *corpus delicti* is not made out! I ask the learned gentlemen who are to follow me, to make their assertions more specific, and less declamatory. While they rail so vehemently at the inadequacy of our evidence, and so unhesitatingly denounce this and that portion of it, I challenge them to account, by the agency of any natural cause, for the phenomena, I mean all the phenomena of this case. When they do that, I will consent to join the chorus of doubt. I will enlist under the banners of skepticism and uncertainty along with the counsel and Dr. Togno. But until that is done, I must be permitted to claim some consideration for the case of the prosecution, and to ask credit, full credit, for the evidence we have adduced. Something has been said about cholera morbus, and the liability to mistake the symptoms of that disease for those of arsenical poisoning. Admit-

ting, for the sake of the argument, what I distinctly deny, that these symptoms are identical, I might ask with confidence, whether cholera morbus would account for what are quite as important as the symptoms, the peculiar appearances after death, and the results of the chemical inquiries. Unquestionably it would not. Does any one of these witnesses, always excepting the doubting gentleman whom I have mentioned so often, and whose name I will promise not to repeat again, think this a case of cholera morbus? Not one. Do the physicians who attended Mr. Chapman, think it was a case of cholera morbus? They have told you distinctly that they cannot account for the symptoms or the death. Yet you are asked to believe it was not a case of poisoning by arsenic, and that it was a case of cholera morbus, though the professional witnesses discredit it, though the attending physicians discredit it, and, last of all, though the prisoner herself, in the face of this Court, has discredited it. It is among the wonders and distinctions of this case, that, while we were struggling here for your confidence or distrust as to the character of the disease by which the deceased came to his death, we should have the opinion of the prisoner herself as to the nature of that disease put in evidence accidentally and inadvertently, I believe, by her counsel. That opinion ratifies fully the views of the prosecution here. In the letter from Mrs. Chapman to Col. Cuesta, dated at Erie prison, she uses this remarkable language, to which I ask your attention, especially, "When I reflect that there is a probability my dear husband was poisoned." This is a most significant concession. The counsel tell you he died a natural death, and almost go so far as to tell you what it was caused it. The prisoner tells you he died of poison, and in a word dispels, so far as her opinion goes, all the dimness and uncertainty that have been conjured up. She tells you it is probable her husband died of poison. They tell you it was natural disease, and natural death, and ask you to attribute it to causes which have been specially assigned before you. I leave it to the counsel to impeach their client's deliberate opinions on the symptoms of Mr. Chapman's case put in evi-

dence by them, and retort on them the question so significantly put to all our medical witnesses, whether he who judges of disease at a distance and on the testimony of others, can form as accurate a judgment as he who watches the bedside of the patient, and personally observes every symptom that is exhibited. In addition then, Gentlemen of the Jury, to the symptoms which are unquestioned symptoms of poisoning, to the post mortem appearances corresponding with those caused by the presence of poisoning—to the chemical experiments also indicating its existence, to the professional opinions fully confirming it—in addition to all these matters of evidence, connected and “clamped” together as they are by the fact of the purchase of the poison, I ask you to take into consideration the declaration of the prisoner herself of her belief on the subject, and then to come with me to the conclusion, that William Chapman died of the operation of poison, and that poison arsenic.

I come now to the question of the agency of this prisoner in that death, assuming it as proved to have been a violent one. And I think if your minds have arrived at this conclusion, you will realize the force of what I have already said, that in one event these inquiries are not separate, not distinct, but closely and necessarily connected. The issue tendered us on the part of the prisoner, as I have told you, is between perfect and unspotted innocence, and the blackest guilt, and the theory of the defense rests on the allegation that, down to a certain period, the prisoner was pure in impulse and innocent in conduct, and that even subsequently all that can be laid to her account is what, in the expositor of her counsel, is called imprudence and indiscretion. Crime, you will remember, is not admitted in any form, either as matter of commission or connivance. She is, by the softening tints of this theory, the loving wife, the affectionate mother, and, if I am not mistaken, the counsel depicted the agonizing desolation of the broken hearted widow. She was bowed down by genuine affliction in the house of God, and moved by her tears and groans the natural sympathies of the reverend gentleman who has been examined here as a wit-

ness in her behalf. She watched her dying husband's couch. Yes! Gentlemen, remember, that too is the necessary ingredient of this theory of innocence and propriety. She soothed his dying sufferings—she saw the beginning and watched the progress of the disease that was to make her a widow and her children orphans. Yet that husband died by the agency of the most active and agonizing poison known in science, and the mystery, to use the weakest word, of the case never occurred to her. The physicians who were in attendance were struck with amazement at what they saw, and now tell you they are at a loss to account for the death, yet she who, by the theory of the counsel, was the sick man's guardian nurse, sees nothing but the simple operation of natural disease. I refer now to this only as showing how closely the two great questions in this case are allied, and what a lurid light the fact of the death by poison, once established, sheds upon the evidence immediately relating to the prisoner's conduct. It would be premature to dwell more particularly on it in this place.

You will remember that this, like most atrocious crimes, was secret and mysterious. It was the result of a combination of conspiracy guarded with all the reserve and secrecy that such a design required, and shrouded in the darkness suited to such unhallowed councils. Beside the bond of common interest which always connects accomplices in guilt, but which to prevent the defeat of justice, the policy of the law sometimes severs, there is in this case a tie which is never, for the purposes of civil or criminal justice, permitted to be broken. They are man and wife; and the secrets of their conspiracies are therefore sacred by judgment of the law. What they resolved to do, when their plan of blood was suggested, with whom it originated, by whom it was fostered, and by whom matured, how it was carried into effect, when the machinery was set in motion, in what way it was made to operate on the unsuspecting victim, are questions which, so far as they depend on what is called positive, as distinguished from circumstantial evidence, we have no means of answering. No human being can answer them but the pris-

oner and her accomplice, and their lips for all the purposes of judicial evidence, are sealed in silence. No eye but theirs saw the mixture of the potions they prepared. No ear heard the arrangement of their designs, or the expressions of their confidence. I do not mention this as an apology for circumstantial evidence. With men of intelligence it needs none. The answer to all the vapid declamation that ever has been or may be uttered against it is, that it is the only evidence by which secret crime can ever be detected, and that the inferences drawn, in the honest exercise of reason, from facts that cannot err, and are themselves distinctly proved, are justified by every principle of law, reason, justice, or morality. All we ask of you, then, on the evidence of facts, such as we have laid before you, is the fair exercise of your own intelligence. We require nothing else. The counsel have told you that the dawn of the intercourse between these prisoners was illumined by the holy light of chastity. I accept the metaphor. But that dawn, thus radiant, was soon clouded, and to that sacred light succeeded the thick, murky darkness of unnatural crime, such as we have engaged in developing, and it is that darkness the officers of this reviled prosecution have been obliged to penetrate, with the aid of such evidence as facts and circumstances supply.

The essential element in such a case, is the existence of a motive to crime in the prisoner, and so important is it regarded on all sides, that the counsel told you in language not the less just because it is figurative, that this indictment is built upon motive. And what motive, it is asked, could the prisoner have to perpetrate an act like this? Was there any conceivable inducement for her to sacrifice all she, in her day of innocence and prosperity, enjoyed? We agree to this test of our case—we allege no wanton, no gratuitous enormities. Bad as we believe this prisoner to be, and lost to all moral principle as we think this evidence has proved her, we have no wish to depict her as one of those deformities of humanity which we have read and heard of, and of which one of the books on your table contains an almost incredible instance, to whom poisoning and death are

matters of sport. But we will show what the impulse and the inducement were, and what was the promised equivalent that, in this disease of fancy, tempted her to guilt and ruin. She was, I take the picture as drawn by her own witnesses, in the midst of this world's happiness, and had within her reach all those means of enjoyment that usually fall to mortal allotment. She was a wife who, I say it in justice to the memory of one, of whom, in the mortal struggle here, not a word of praise has yet been uttered, was beloved and caressed by a husband, whose honest affection was worth possessing. She was the mother of children whom, I say this in justice to her, she loved, and who, judging from what has been exhibited to us, were worthy of a mother's love. She was pursuing an honest and respectable avocation. This is what was on one side of the account; what was on the other I will presently show, and I avail myself at once of the occasion to remove what I believe to be a misconception on the part of the prisoner's counsel as to what we allege to have been her motives and impulses.

It seems to be imagined that we attribute all that occurred to the influence of licentious passion, and consider the murder as the consequence of adultery only. This certainly is not my view of it. I say now, if it has not been rendered manifest by the course of our examination, and I invite the counsel to the inspection of my position, that I attribute this crime to a complicated motive operating on a moral temperament radically diseased, and the allied impulses that I assign for it are not only the licentious appetite which dishonored the closing hours of her murdered husband's life, and placed her inextricably in her seducer's power, but avarice to be satisfied by the wealth she supposed that seducer to possess, and ambition of the rank and honors with which she believed him to be clothed. With this theory of the motive, the counsel will believe me when I tell them we concede most fully that the prisoner was the victim (not, however, the innocent victim) of Mina's falsehoods. Down to a certain period, long subsequent to her husband's death, she believed them all. Yes! all. Incredible, monstrous, as those

fictions now appear, she believed them! And, believing them, there was no want of motive, adequate motive, to a mind like her's. The physician to the mind diseased was at hand here to exasperate disease, to hasten the sluggish malady. Money, immense wealth, was the burden of every tale the tempter told—his trunk of diamonds, and his mines of silver—his thousands in this country, and his millions in Mexico—his rank, his titles, his great connections—these were his chosen themes. How these were to be secured she well knew, and yet we are asked for a motive. I take the theory given me by the counsel, that she was deceived, grossly, fatally deceived, and I tell them my theory is that that deception was the great secret of her crime. The whole mystery is solved by the prisoner's solemn declaration to Mrs. Smith, when speaking of her marriage: "I can declare to you, Mrs. Smith, on holy writ, that had not the Consul's sister told me Mina was a gentleman of very large fortune in his own country, I should not have been deceived, but she said so, and I believed it." What the progress of this deception was, and how the impulse it supplied became allied with that of adulterous passion, I will presently show, when I come to examine the evidence in detail. The preliminary ground I now take is this, that Mrs. Chapman believed Mina to be what he represented himself to be, and she knew that the only way to secure to herself participation of the wealth and honors for which her tainted fancy longed, was marriage with their supposed possessor, which could only be consummated by the death of her lawful husband. If to the illustration of the motive thus supplied, we add evidence of adulterous intercourse prior to her husband's death, which placed her wholly within her paramour's control, and added the fear of detection to the other impulses that were torturing her mind, the coincidence between the manufacture of the letter in Mr. Durand's store, which I pledge myself to show you was meant for her inspection only, and the purchase of the poison—the occurrence of the marriage so indecently and unnecessarily hurried before her husband's corpse was scarce cold in its grave, the dramatic spectacle of the grief so ostentatiously

made in All-Saints church after her marriage, the real state of her feelings to the dead and the living husband, as developed in her love-letters to Mina, and, last of all, her conduct and language when suspicion first was awakened, and after she knew Mina to be an impostor, we shall, I think, have made out the position my colleague took in his opening, that this wretched woman is guilty to the full extent of the dark crime laid in the indictment.

I will now proceed to the narrative as illustrated by the evidence. Let us pause one moment, and see what was the relative position of this now desolate family, when the hero of this dismal tragedy appears. I say its relative condition, for what amount of positive prosperity and tranquility was there enjoyed, in spite of all the evidence which has been laid before us, we have no means of knowing. 'Both its prosperity and its tranquility are, to my mind, at least equivocal. But as matter of contrast with the horror and crime which afterwards desolated it, it was a happy and prosperous, and making relative what the glowing diction of the counsel has described as positive and substantial, I will concede it to have been the abode of harmony and domestic peace. At the threshold of this home of innocence and prosperity, on the ninth of May last, a stranger asked for alms, and happy, it is truly said, would it have been for this prisoner and her family, if that boon had been refused, and the beggar had been thrust out to seek elsewhere the charity he claimed. If I were to select my language I would not describe that stranger, thus cherished by the warmth of genuine charity, as the destroyer only, as the counsel has called him, though certainly destruction and desolation have followed his steps. It was rather the tempter that came. Yes! Sir. The tempter who was to extend his subtle wiles over all about him, and, using as his ready instrument, the wretched being now before you, was, in the course of one little month, to complete all the nefarious projects of his prolific brain, and with other hands to consummate the darkest of mortal crimes. I am unwilling, Gentlemen, to refer oftener than is necessary, to the evidence of the little girl who has been examined before us.

but there was something so touching in her trembling accents, and so simple in the few words with which she described Mina's arrival at Andalusia, that I cannot but ask you to recall them, and then think of all the horrors that have followed. "My father was rocking the child in the rocking chair, when Mina came in." In one month from that time, that kind father, of whom the child could scarcely speak without tears, was slumbering in his bloody grave, and his place was usurped by the author of his ruin. The first words that Mina uttered comprised his oft told tale of wealth and dignity. The story was believed. Great credit has been claimed for the prisoner for the charitable impulse which actuated her in so readily acceding to the request for a night's lodging, and it will be recited as evidence of the relentless skepticism of the prosecution, if I venture to doubt the genuineness of that charity. But, Gentlemen, if this pure flame did brighten in the recesses of a heart where I am justified in saying few kind feelings have found a place, it was but a jet that died in its birth. A less pure impulse soon succeeded, for we find from the prisoner's disclosures made long subsequently to Mr. McIlvaine, that immediately after Mina's arrival, it was a subject of congratulation between his hosts, that so rich a man, who had it in his power to do so much in a pecuniary point of view for them, had accidentally found refuge in their house.

It is among the mysteries of this dark transaction, that this gilded bait was so readily swallowed. It is almost inconceivable that such a tale told by such a man should be believed. A wandering mendicant, with scarcely rags to cover him, speaking the language with the greatest difficulty, represents himself as the possessor of rank and wealth, and tells a history of adventure, we might think, too absurd for one moment's credit. The prisoner is not an ignorant woman, and certainly has abundant intelligence. Yet his tale, with all its essential absurdity and inconsistency, is believed—implicitly—unhesitatingly believed. The next day, such is her anxiety about this attractive stranger, the prisoner accompanies Mina to Bordentown to visit his alleged friend at

Joseph Bonaparte's. What occurred on that ride, we have no means of knowing. The only individual who accompanied them is not produced. But whatever did occur and whatever was told by the Spaniard to the prisoner, to the secrets of that ride may be traced all the influence he so soon acquired, and the confirmation of the incipient delusion by which her diseased fancy was already possessed. Nothing, it is admitted, occurred during that expedition, calculated to produce rational confidence, yet from that time, such was the art of the tempter, and the credulous facility of his victim, that she never doubted. Immediately on her return, in the full flow of exultation and confidence, we find her boasting of the rich prize bestowed on her. The day she came back she had a conversation with Ellen Shaw, who cautioned her against deception. Considering what has occurred, and the relation of the parties, this was in all respects, a remarkable conversation. She told Ellen Shaw she would soon have thousands where she had dollars now—that she had concluded to let Mina stay three years; that he was rich in his own country, and would send for diamonds for her; she was to teach him English, and he was to give her \$2,000 a year. Ellen Shaw told her he was a Spaniard, and nobody knew what he might do. She replied he was a dear young man, and she was going to take him in as her own son, that she would be a mother to him, and her children should be sisters and brothers to him. Ellen then told her Mina did not look like a man that had much, to which she said nothing. "After that," adds the witness, "Mrs. Chapman and Lino were in the room together almost all the time." This occurred, you will remember, on the 10th of May, the day after Mina came to the prisoner's house.

The confidence thus suddenly generated was not, however, so complete as to render further confirmation unnecessary, and from time to time we have new incidents and new falsehoods calculated to strengthen it. You have heard the detailed account of the visit to the Mexican Consul, and have seen how the occurrence of that visit tended to increase this wretched woman's delusion. She returned from Philadel-

phia with the firm conviction, justified, I think you will again agree with me in saying, by no substantial reason, but nevertheless, with the first conviction that all Mina's representations of his rank and wealth were true. Swayed by the ruling passion which has so fatally influenced her destiny, she seems to have been perversely and resolutely insensible to every circumstance calculated to awaken her from this dream of imagination, and to have reposed in unsuspecting credulity in defiance of all warning.

From time to time Mina seems to have thought it expedient to strengthen her delusion. That necessity, however, gave him but little trouble, for he had only to invent some new falsehood and gild it well, to have it readily believed. On the 28th of May, he makes his will, and deposits it with the prisoner, by which he gives to her a munificent legacy. This symbol of future wealth, though bearing on its face the characters of falsehood, was cherished by her as the representative of riches. It was, you will recollect, in the Spanish language, which she did not understand, and purported to be worth, by the figures in the margin, the enormous amount of a million five hundred thousand dollars, though in the text it is but fifteen thousand dollars. That discrepancy could not have been known to her, and in all probability to her excited imagination this paltry bit of paper scrawled over with characters scarcely legible, was the symbol of the enormous sum stated in its margin. It formed an appropriate part of the system of received falsehood which seems to have possessed her, and is the legitimate companion of the trunk of diamonds, and the mines of gold and silver, of which he represented himself to be the possessor. Everything, in short, tended to pamper the morbid appetite which consumed her, and to nurse the infatuation which was leading her step by step to ruin.

What, then, was the relation of these parties at the expiration of a fortnight from Mina's arrival? He had become completely domesticated, and through one member of the family had acquired an influence over the rest, against which it was vain to struggle. For his convenience and his com-

fort, the affairs of the family were neglected, the school was abandoned, and the active member of the household seems to have had no other care than to minister to the rich stranger's wants and promote his convenience. This brings me to the next incident of this romance of history, and to the opening of the volume of actual and atrocious crime. The desire of securing wealth and rank I have stated to be one of the alleged motives to the commission of this murder; I come now to the additional impulse of licentious passion.

And here, too, we are triumphantly told, that the Commonwealth has failed, miserably failed. Where is the evidence of licentious intercourse? Where is the proof of this treason to her husband? Where is the overt act of adultery? "Indiscretion and imprudence" she may be charged with, but of the taint of crime she is as free as innocence itself. This is all very well. It sounds well, and looks like the boldness of conscious innocence. It is very fair declamation, and nothing is more allowable by the rules of forensic logic than to ask questions, and then to answer them yourself. But with the permission of the gentleman, I will put in a supplemental answer to his tauting interrogatories, and if he chooses then to write "indiscretion" and "imprudence" opposite what I shall submit are in evidence here, he will permit me, in charity to himself, to believe he is speaking his client's language, and not his own. The Commonwealth has failed to show the existence of an improper intimacy between these prisoners. Let us see how this matter really is. It is clearly in evidence before you that the prisoner and Mina rode together for hours alone—that she would lock herself up in a room with him and shut close the windows of the apartment—that she went to the city with him, and remained there, separated from her husband and family for at least three days—that she permitted him to take gross liberties with her person, to lie in her lap, and fold her in his arms, whilst they sang love songs to each other—that on one occasion (remember, gentlemen, it is a wife and a mother of whom I am speaking) she was seen lying on his bed in her night clothes, and at another time they were seen kissing

each other. All this is in clear evidence before you, and it is this which you are asked to pronounce "indiscretion and imprudence." Yes, this kissing and fondling, this daily, hourly, habitual indecency, this actual corporeal prostitution, this shameless indulgence of appetite, is nothing—it is the mere levity of thoughtless innocence—the mere "indiscretion and imprudence" of unsuspicious purity—it is no overt act of crime. But no, say the counsel, we deny that there is any evidence of all this. The witnesses that prove it are perjured—they are unworthy of credit—they have contradicted themselves. This, I confess, is safer ground than justification, but still it will not do. I appeal with confidence to the Court and Jury, if this allegation of contradiction and perjury is sustainable. Is Ellen Shaw perjured? Is Ann Bantom perjured? Are Esther Bache and Edwin B. Fanning perjured? No, Gentlemen, there never were better or more credible witnesses produced in a court of justice, and I deny that on any point essential to the veracity of their statements here, did they in the slightest degree contradict themselves. You will easily conceive that it is no trifling matter to be exposed to the trial which those witnesses have endured, and to be the passive objects of the searching interrogatories and the withering frowns of the gentleman who has conducted the cross-examination; yet, severe as was the test, it was fairly met, and the humble individuals who have been examined before you, strong in their belief of the truth of what they told, could not be driven from their ground by the harmless thunder of that voice or the lightning of that eye.

But it is said, even admitting there was affection and solicitude felt by the prisoner for this stranger, it was parental affection, the care of a parent watching over a child; and to sustain this new position, great reliance is placed on the alleged impaired health of Mina, and his liability to fits, which rendered constant personal attendance necessary. In relation to these alleged fits I shall only say what the evidence justifies me in saying, that he never had a fit while he was at Andalusia, and that the prisoner never for one moment believed he had. For eighteen months previously to May

last, while he was an inmate of the penitentiary, he had no fits, and we have no evidence of his ever having one since he left the prisoner's house. No one of the residents in that house believed he had fits, and every witness that has been examined has described them in such a way, as to leave little doubt that they were part of his system of falsehood, and were got up with the connivance of the prisoner, to afford them an opportunity of private and undisturbed association. Mary Palethorpe describes them as a strange sort of fits, because, while he had them, he seemed to know everything that was going on about him. The prisoner pretended to regard his life in danger, yet never consulted a physician till after her husband's death, when she indirectly mentioned it to Dr. Knight, who, on examination, though he saw him but a few minutes after his recovery from one of his spells, could discern no symptoms of disease. She told Esther Bache that she could not remain in the room with her, because Mina had one of his spells, and that his life was despaired of; yet in a short time they were heard laughing and talking together, by the witness, in Mina's room. Yet it is on the basis of these dangerous fits that this new hypothesis of parental affection rests. If you believe our witnesses, what becomes of the theory? If you do not, I think I can satisfy you by evidence that cannot be impeached, that it is equally absurd. By way of illustrating the actual state of feeling between these individuals, and showing how idle this *dernier resort* of "parental affection" is, I will invite your attention for a moment to one of the letters written by the prisoner to Mina immediately after their marriage, and will ask you to give it the retrospective operation I ask for it. Although any one of those characteristic letters would suit my purpose, I will read to you those of the 5th of July, the marriage day, and of the 7th of July, from Syracuse. There is something remarkable, too, Gentlemen of the Jury, in the separation of this loving couple on the wedding day. They are married in the morning, and are upwards of one hundred miles distant from each other at night. It looks very much as if passion had been gratified already. It will not do to tell us that it was

a mere marriage of convenience, in which passion had no part. These letters are damning evidence that passion had its agency in this ill-fated union. Paternal affection! The mother and the child! What will not the counsel ask you to believe? Read those letters, Gentlemen, and tell me if the most glowing love that ever actuated the bosom of humanity could have uttered more ardent, more passionate expressions.

"My dear Lino, very pleasant are the sensations that vibrate through my soul, when thus addressing you, my dear Lino, for the first time, to call you mine! and till death shall separate us, how pleasing—how delightful! and you, dearest Lino, so young, so fond, so noble, and so truly grateful to your Lucretia! My soul would gladly dwell upon you, till the time for writing would pass away." "I have but half an hour to say all I wish to my dearest dear."

"If," she says in her letter of the 7th, "my dear Lino had been with me, he would not have permitted his Lucretia to have rode a second night all night, without resting on her bed."

"My dear sister and family join with me in sending you and our dear children all the love my letter will hold; so be careful, my dear, and do not spill, and so lose our precious love. Sister says I must make haste and finish my letter to send to my pretty little husband. My dear, I hope you will not let our children see the nonsense I have written. My very kind nephew is now waiting with his horse geared, and snapping his whip as you do sometimes, when a little tired of waiting, so good bye, good bye, dear Leno, good bye. It seems a long time to wait till next Wednesday before I meet the fond embrace of him who is so dear to me, as is my young General Esposimina. Once more, my dear, adieu, says your devoted Lucretia Esposimina."

Parental affection! A marriage of convenience! Imprudence and indiscretion! Good God, to what vile uses will language be prostituted! Recollect too when these letters were written. Her husband had not been dead two weeks when this marriage, which all the sophistry of the counsel cannot palliate, was consummated, and these letters were written. It was the author of these letters, filled as they are with the disgusting effusions of passions, that acted the scene of hypocritical grief which Mr. Sheetz has described, and

dared, whilst fresh from the rank sweat of a licentious bed, and with her hands stained with a husband's blood, to partake of the holy sacrament in the house of God. I regard these letters as the most important evidence in this cause. They admit of no misconstruction. No art can explain them away, and what I ask of you is, to take them as the genuine expressions of the uncontrolled passion that has throughout swayed this prisoner, and to use them as illustrating other points of this cause and of the evidence. To take them in connection with the overt acts of profligacy proved by the other witnesses, and then, rejecting the absurd idea suggested by the counsel of the parental and filial affection which they would have you believe existed between them, to come with me to the conclusion, that there was an adulterous connection between Mina and the prisoner, long prior to her husband's death.

But we are told Mr. Chapman was deceived, too. He wrote letters to Mina's parents, believing them to be rich and noble. He gave him the order to Mr. Fassit. He gave the order on Watkinson, and what is most relied on as a sufficient vindication of this prisoner's character, he displayed genuine affection for the alleged author of his dishonor, sympathized with his misfortunes, and mingled the tears of pity with those of apparent grief. Mr. Chapman, though an amiable and a kind hearted man, it is conceded, was energetic in neither mind nor body. He was entirely too under the control of the prisoner, whose masculine intelligence and habits gave her an influence in her family which it was useless to resist. Whatever she told him to do was done. It is in evidence that he was imposed upon by Mina's artful tale, and that to a certain extent he was deceived by him. I see no difficulty in conceding this. But what then? It is clearly proved that he saw the intimate relation between Mina and wife with pain and anxiety. It is in evidence that he felt all the agonies of well-founded jealousy. That husband must indeed be desolate and degraded, who has to utter his complaints, and publish his dishonor, to his servants and his guests. Yet that, if you believe the witnesses, was the condition of this

wretched man. During the mysterious visit of three days to the city, about which the prisoner has given us no evidence, as day after day passed without their return, his anxiety increased; he said that they were ruining his peace,—he went on, said Ellen Shaw, like a crazy man, and to Fanning he unburdened his mind by declaring he believed they had gone off together, and that if they returned home late, and went, as he supposed they would go, to Mina's room, "by God, he would kill him." It was the same witness that on his death bed, Chapman supplicated to remain with him, "for," he said, "when Mina is sick, all attention is paid to him; but when I am sick, I am neglected." And what, let me ask, was easier than for these adepts in deception and falsehood, on their return from their temporary elopement, to prepare some fiction, which, by a weak mind like his, would easily be received? Mina had the ability to deceive less credulous beings than this degraded, broken-hearted man; and when, aided by such an ally as the prisoner, is it unreasonable to believe that their combined inventions were sufficient to lull, for a time, the demon that tormented him? When they returned from the three days' visit, the story of the sister's death was fabricated and believed; and for my part, taking into view what is proved to have been the character of the deceased, I see no irreconcilable inconsistency between the agonies of jealousy displayed to Fanning and Ellen Shaw, and the tears of sympathy which, in pitiable credulity, he shed at the tale of the misfortunes of his destroyer. But be this as it may, admitting the alternations of feeling to have been as great as they are described to have been, let it be remembered that this dying request to Fanning was not to leave him in helpless solitude, and that almost the last accents of his tongue were the utterance of that jealousy which long agonized his soul. Add, Gentlemen, to all this, what is in evidence as to the feeling of the wife to the husband, her neglects, her insults, her harsh language, and her unfeeling conduct, while all the gentle feelings of her depraved heart were engrossed by this mysterious stranger. Remember the constant bickerings, the tyrannical influence, and

above all, the wish so cordially and so thoughtlessly uttered at a moment when reason's sway seems to have been suspended, that "she wished to God he was gone, for she was tired of him;" and I imagine you will be at no loss to see, in the temperament of this unhappy woman, the appropriate elements for the operation of those inducements to crime which surrounded her.

I understand perfectly well why it is that the prisoner's counsel have taken the bold, unnatural stand to which they have been driven, of denying all they could, and justifying whatever they could not deny. I realize the necessity by which they were compelled to endeavor to impeach the testimony on which this part of our case rested. How far they have succeeded is another question. But what is its effect if it is not discredited? It shows too clearly that this woman was utterly abandoned and lost to moral principle, and that she and her partner in guilt had gone through a complete preparatory process in the school of crime. That having sacrificed on the altar of passion her own honor, and the honor and happiness of her husband, she was ready to the same relentless idol to make a bloody offering. More fiends than one were busy in her breast—more than one disordered passion had its refuge there. One crime, one ghastly crime, had been achieved, and in its dark shadow, and at no great distance, lingered the only other crime, which humanity regards as more heinous. I have heard, Sir, of the sister virtues, and I have heard, too, of a relationship of crime—the furies as well as the graces of the soul, but if there be two crimes naturally, essentially allied with each other, they are adultery and murder. In the moral law of God the first great prohibition was, "Thou shalt not kill"—the next, "Thou shalt not commit adultery"—and the interval between the two points on the scale of human depravity is small indeed. I ask you, then, as husbands and fathers, knowing the loveliness of domestic love, appreciating the sanctity of domestic obligation, realizing what you owe to your wives and children, and knowing that no conceivable inducement could make you avoid that obligation, whether you can conceive

a more unnatural, a more revolting crime than that which blasts all these, blurs the purity of woman's fame, and entails deep and lasting ignominy on the wretched offspring whose undying curse is the infamy of her who gave them being. I ask you, too, in the spirit of sober inquiry, if the distance between adultery and murder is so great, or the transition from one to the other so unnatural as to render it improbable that the woman who could perpetrate the one, would commit the other. If you believe the evidence of all the inmates of her house at Andalusia, who have been examined here, if you believe that the prisoner felt towards her husband, as it is proved she did feel, that she was as guilty as those witnesses describe her, that she was the victim of this unholy passion, that seemed to know no control or check, that she had forgotten all sense of decency, all shame, all moral and religious principle, all her sacred obligations to the husband that once cherished her, and to the poor helpless children to whom she had given birth, that she was in the daily indulgence of licentious appetite, and the habitual commission of open adultery, is it a wonder that her moral sensibility, indurated and deadened by this wear and tear of profligacy, did not revolt at the suggestion or perpetration of the crime of which she is now accused? And yet we are asked for motive! And the inquiry is tauntingly put to us, whether we dare, in the mere wantonness of persecution, to allege a crime without an inducement! The moment, Gentlemen of the Jury, of this prisoner's acquiescence in this act of blood, was doubtless one of acute mental agony. I hope, for the credit of degraded humanity, there was at least an instant's pause on the verge of the awful gulf of unpardonable guilt, and that the bloody seal was not fixed to the final covenant of crime, without a momentary pang. But was there comfort in the retrospect? Was there consolation in the past or hope in the future? For this wretched being, none. Beside the shadowy form of fancied wealth and honor, that stood beyond the sepulcher to tempt her on, there were other impulses and other motives, that urged her forward. She knew her injured husband had his rights, and that if

her abandoned conduct were once discovered, the limit to endurance might be passed, and she would be thrown, ignominiously thrown, a degraded outcast on the world. She knew, too, that her servants could at any moment reveal her guilt, and she felt that the dreaded vengeance might at any moment break and overwhelm her. She knew, too, by what an uncertain tenure the supposed affection of her seducer was held, and felt that there was but one way by which her fears could be hushed, and her hopes realized. That mode, I need not say, was the death of her injured and abhorred husband, and marriage with him whose wiles encompassed her. Here, then, was every inducement likely to operate on a diseased mind like hers, every conceivable impulse to urge her onwards. And yet we are asked for motive!!

I approach, now, the period of the catastrophe. In the early part of June it appears from Mr. Watkinson's order book, the prisoner was with Mina in the city of Philadelphia. Mr. Chapman's order for the clothes is dated on the 9th, and the clothes were charged to the prisoner in the blotter on the 10th. About a week before the 16th, and at the time when they were at Watkinson's store, Mina purchases a quantity of arsenic at Mr. Durand's store. Young Mr. Guillou fixes the dates accurately. The stores of Mr. Durand and Mr. Watkinson are, you will remember, not fifty feet asunder, being at opposite corners of the same street. The poison is purchased at least a week before it is used, for the deceased exhibited no symptoms of indisposition till the 17th. Why this delay? Why this hesitation? If the deed of blood were resolved on, and the instrument at hand, why pause? But it was not resolved on. It was not fixed. The fatal train was laid, but the hand that held the fire trembled. The plan was suggested, perhaps matured, in the councils of crime, but the sticking point of resolution was not yet reached, and some new security was to be given that the temptation was not illusory, and that the glittering pledge, for which she was to stain her soul, was safe. That security was the forged letter, manufactured under Mina's dictation, by young Guillou, on the 16th of June, the day before Chap-

man was taken ill. The coincidence between the fabrication of that letter and the illness of the deceased, is most remarkable. It purported to be from the Mexican Consul, and contained a full confirmation of Mina's representation. It was couched in terms of affectionate regard. It was written at Mina's request in English, a language which the prisoner knew he did not understand. It was the only assurance which her lingering doubts required, and the moment she had that imaginary security, her tottering resolution fell. On the 16th the letter was written for her inspection, not Mr. Chapman's. The fraud practiced on him was complete. He needed no confirmation of his faith. For, from the evidence of Lucretia Chapman, it appears, that but a day or two before her father was taken ill, on Mina's expressing to him his fears that he should soon be without a home to shelter, or friends to protect him, the answer of the old man was, that his house should be his home, and that, till he heard from his family, he might remain there. The deceased had no suspicions that required this opiate. It was the doubt of another this letter was meant to satisfy, and that doubt once removed, the deed of blood was consummated. I do not pretend to express an opinion as to the character of the incipient malady, or to say whether I regard it as natural or not. It is not necessary that I should. If it were originally a natural disease, it presented a more appropriate and a safer opportunity to apply the poison, now, on the security of this letter, determined on. If it were the result of the operation of a minute portion of this deadly material, it corroborates the opinion I have expressed as to the object of the forged letter, by diminishing the interval, and fully authorizes a conviction under this indictment.

In reverting to the evidence relating to the period of the illness of the deceased, it is not, of course, my intention to refer particularly to the phenomena of disease, but to confine myself wholly to the conduct of the prisoner and her accomplice, during that time. Whether the original indisposition resulted from a natural cause or not, is immaterial. On Sunday, Mr. Chapman was convalescent. Dr. Phillips, who

saw him on that day, proves this. He considered him then so slightly indisposed as, in his opinion, to render it unnecessary for him to call again, and having prescribed some nutritive food, he left him. On Monday morning, according to the evidence of Ann Bantom, he was still better. The same morning, soon after this witness saw the sick man, the prisoner herself made the chicken soup which had been ordered by the physician twenty-four hours before, salted it in the kitchen, and then, contrary to all rules of clinical practice, took it to the parlor to have it seasoned. The witness had occasion soon after, to go to the parlor, where she found the prisoner and Mina, in earnest conversation, with this bowl of soup in their hands. About dinner time the prisoner brought the soup down, saying her husband did not want any more of it. It was left on the table, and afterwards thrown out by the witness. In the afternoon the chicken was taken up, returned almost untouched (of this the witness is positive). About dark, Ann Bantom saw the deceased, whom she had left in the morning tranquil, and comparatively well, and found him suffering in those agonies which never intermitted till he died. These are the facts connected with the alleged administering of the poison on the 20th of June. They are meager, say the counsel—they want connection—they need consistency, and so would it be said—such would be the cry, unless by some special Providence, we could have exhibited to you this prisoner and her conspirator actually drugging the potion for their victim, and calculating in unreserved confidence, the probable duration of his life. I say it boldly and emphatically, in answer to all the ingenious sophistry that we have heard from the junior counsel who opened this cause, and in anticipation of the premeditated indignation of his colleague, that the evidence on this part of the case, is the best evidence, short of demonstration, that we could have given. And that, with the evidence of subsequent conduct on the part of the prisoner, it is demonstration. In the morning, the individual who is believed to be poisoned, is convalescent, and exhibits no symptoms of disease. In the evening, without any adequate and

visible cause, he is in the actual agonies of death, such agonies, too, as this species of poison is known to produce. In the interval between the morning and the evening, no one has access to him but the prisoner and her accomplice; perhaps I may say no one but the prisoner, and the two children, one of whom the prisoner has not dared to produce. If we had no other evidence than this, with the fact that poison was in that house, and in the possession of the individual with whom this prisoner lived in all the confidence of crime, it would be sufficient—amply sufficient. But there is more. In that interval he takes no medicine at all, for he required none, and no nourishment but what this prisoner prepares with her own hands, and takes from the kitchen to the parlor under a false pretense, and over which, before it is carried to the sick man's room, she and her agent for the purchase of poisons hold a secret council. From the moment that soup was given, the deceased became suddenly and alarmingly worse. But it is said, the soup was brought down, and according to our own showing, placed on the kitchen table, where every one had ready access to it, and we are asked whether we impute to this prisoner the reckless barbarity of thus exposing her children and her servants to indiscriminate destruction. Certainly not. No one has, I presume, believed that the soup thus ostentatiously paraded to the servant who had seen her prepare it, was poisoned. I, unquestionably do not believe it. But is it fair logic that because some unpoisoned soup was brought down, no poisoned soup was given? It seems to me to be sounder argument, that the exhibition of this soup was part of the requisite machinery of this scheme, and to be a fairer inference from what is observed immediately after, that a portion of this soup was detached for the purposes of these conspirators, and administered, than that because the prisoner left the bowl of soup upon the table, there was no poison. But, say the gentlemen, it is the bowl of soup that kills the poultry in the yard. I thank them for imputing such a statement of facts to me, but must be permitted to disclaim it. I never said so. None of our witnesses ever said so. All I have said is, that the poultry

died, suddenly and mysteriously died, in a way for which no natural cause can account it. I mentioned it as a circumstance of coincidence, and only as such, to go for what it is worth. Beyond this, I certainly claimed no special consideration for it. But there is still another solution of all this suggested. The deceased, it is said, ate imprudently of the chicken, and that killed him. Of this ingenious suggestion, I believe the credit does not belong to the counsel, and of it, I shall merely say that not only is such an indulgence of appetite not proved, but it is disproved. Ann Bantom expressly proves that the chicken came down untouched, or nearly so, and plausible and satisfactory as this new theory of disease may seem to the counsel, it is unfortunate that their client has so expressly discredited the whole of it by the declaration to which I have before referred, by which she assigned the real cause for her husband's death. It is not my business to anticipate the arguments of the counsel, of which I can only judge by the glimpses afforded me by the opening counsel. I therefore dismiss this part of the case, and proceed with my appropriate duty, with this single remark, that the simple fact of the immediate succession of the characteristic agonies of arsenical disease, to the taking of this soup prepared by the prisoner and Mina, is alone sufficient to dispel all the confusion with which the false logic of the counsel would envelop it, as well as the thin, misty clouds which their solitary witness to the facts is supposed to have conjured up.

On Monday evening, Fanning returned to Andalusia, and found the deceased in a state of indescribable and acute suffering, with the same symptoms that the other witnesses describe. So alarming did his condition appear to Fanning, that he urged the prisoner to send for a physician, which she refused to do, and so anxious did the sick man himself become, that it was on that evening, in one of the short intervals of tranquility which his torturing malady afforded him, he implored the witness to remain by him and protect him. No physician was sent for till late on Tuesday, the day before he died. On Tuesday morning, before Fanning left his cham-

ber, the prisoner came to him, and asked if he remembered that two weeks before her husband had eaten of stale beef, which disagreed with him. She added, "he has never been well since that." This, you will remember, was the day after he had, according to her statement to Mrs. Smith, and the evidence of Lucretia, eaten so voraciously of the chicken, and was the first of the series of inconsistent falsehoods with which she has, from time to time, endeavored to account for this catastrophe. But why, let me ask, this unsolicited information to Fanning, why this voluntary revelation for his benefit? Had he made inquiries? If he had, was it not expedient to answer them so as to lull any suspicion that might be rousing itself? Had he any right to inquire? Did his position in that family entitle him to put interrogatories of this kind, or was this prisoner of a temper or character to submit to such a catechism? I think not. But Fanning was entitled to this information for other reasons. He was the only individual of that household who had had opportunities of observation, and on whose fidelity and silence, if guilty, she could not rely. Her servants were not, to her knowledge, in the sick man's chamber, and knew nothing. Her children could have no suspicion. Fanning had seen much, might suspect more, and if he did suspect, might publish his suspicions. For him then, some explanation was required, and to him the first falsehood was told. This anticipation of suspicion, with the palpable inconsistency of the tale she told, with what she afterwards uttered, I readily leave to the counsel to explain. Fanning left the house on Tuesday morning, regarding Mr. Chapman as a dying man.

You will remember that it was on Monday night the deceased complained to Fanning of his wife's neglect. On Tuesday evening the prisoner took the black servant to her husband's room, told her she thought he was dying, and begged her to remain in the kitchen. That same evening Mina had one of his fits, whether real or pretended, I cannot say, and at whose bedside was this prisoner found? The answer is humbling to human nature. At the moment when her injured husband was in the helpless agonies of desperate dis-

ease, asking and soliciting aid and protection from strangers and servants, when he was dying, and she knew he was dying, this faithful and affectionate wife, this living emblem of fidelity and love, was shut up in a dark room with her par-amour, careless to those sacred claims which her dying husband uttered. On Tuesday evening, Dr. Knight, who was not the family physician, arrived, and found the case, as he has told you, desperate. On Wednesday, Dr. Phillips called accidentally, and was shocked to find his patient and friend, whom on Sunday he had left so well, in the very agonies of dissolution. On Thursday morning, with no intermission of suffering from the time the soup was administered to the moment of death, the wretched man breathed his last, and left the authors of his death in the full fruition of all they hoped for.

Such is the narrative that has been put in evidence before you down to the period of William Chapman's death, from which, as illustrated by other evidence of acts and declarations subsequently, we ask you to infer this prisoner's guilt. One circumstance connected with it has occurred to my mind more than once, as most remarkable, I might almost say, miraculous. It is, that this crime, thus shrouded in secrecy and mystery, should ever have been detected. If ever the perpetrators of atrocity had reason to exult in imaginary security, it was these prisoners, when the result of their dark projects was attained. Their victim was sleeping in his bloody grave. The wages of their crime were paid. The criminal indulgence for which they had stained their hands with blood was theirs, while suspicion slept, and no whisper was heard but that which is never still to tell them there was retribution due for guilt. Of the numerous visitors at the funeral at Andalusia, there was no one but saw, in the death of the husband, the ordinary and natural lot of humanity, and in the conduct of the wife, the genuine expression of the widow's grief. Weeks and months pass by, and all is unsuspected. But the calm was deceptive. There was a power watching over the scene to check the full career of crime. The blood of the sacrifice at last spoke from the ground. The

process of detection began with the accidental disclosure of a letter in which, in all the anguish of remorse and jealous suspicion, she reproached the callous partner of her guilt, and from that time to this moment it has never ceased. From the time when the police first visited Andalusia—when suspicion scarcely dared to raise its voice, each day was destined to reveal some new matter of corroborative evidence. The disclosure of the letters—the arrest of the Spaniard—the prisoner's flight—the preservation of the body in the grave—the purchase of the poison—the conduct of the parties—their falsehoods and prevarications when they found the eye of suspicion was on them—all were matters tending to that demonstration which I think we have reached. The hand of Providence was here. You will scarcely credit me when I tell you that one of the strongest matters of evidence in this cause, the proof of the purchase of the poison by Mina in June last, was an accidental discovery, which three weeks ago the Commonwealth was not apprized of. Amid all the details of this horrible business, shocking and repulsive as they are, there is consolation in the illustration it has afforded that crime like this cannot escape detection; and there is room for gratitude to those to whose activity we are indebted for the disclosure of this appalling scene. It is a comfort to realize that we live in a country not only of laws, but of well executed laws, and that we have at least this security from the ravages of crime. And yet you have heard more than a little about official persecution, and about the power of the government being enlisted on the side of prejudice and injustice. The agents of the police, the ministers of justice, all who have dared in the performance of duty to cross the path of the defense, have been denounced as blood hounds, and as leading the pack of foul-mouthed calumniators that are hunting this prisoner down. What epithets are in reserve I do not know. I speak of those which have been applied. I know it to be the distinction of one of the counsel, that he can brow-beat a police officer, and I think I can discern the slumbering metaphors beginning to stir themselves in his brain, to be hereafter hurled, with eloquent indigna-

tion, at those who have officially provoked his wrath. The power of the government! Yes! We have been aided by the power of the government. The power of that government, which we have created for the benefit of ourselves, has been exerted for our security. If the gentlemen mean to say that those who have had charge of this prosecution, have prostituted the influence which their station gives them, to foment or countenance popular prejudice, I send back the imputation with the scorn it merits. The power of the government! Yes, sir, we have had its aid, and we were entitled to it. If we invoked it for the protection of the lives and fortunes of the citizen for the detection of the guilty, for our own exemption from liability to outrage and violence, who will dare to dispute our right to it, or who will dare to censure us for having used it? I heard the suggestion fall from the counsel, with regret. I thought it below the dignity of professional tactics, and only excusable by the despair of a sinking cause.

On Friday, the 24th of June, Mr. Chapman was buried. You will remember, Gentlemen, the various explanations we have had of the cause of his death. I must now add another to the list. To Fanning, she said it was owing to the stale beef—to Dr. Phillips, she attributed it to vertigo or apoplexy, and her counsel say it was the imprudent eating of the chicken. Three hours after the funeral, the prisoner told Mrs. Hitchborne it was all owing to his eating heartily of smear-case and pork. These are strange inconsistencies, which I also submit for the explanation of the counsel. I mention them here, because this conversation with Mrs. Hitchborne is the next incident in the order of time which is in evidence before us. I may, I think safely, pass by all the little indications of levity and indecorum on the part of the prisoner which have been proved to you. Though not unimportant, I have not time to dwell on them. On her return from the funeral at which, according to Mr. Sheetz's evidence, she seemed in deep affliction, she had a consultation with Dr. Knight about Mina, and in the evening, as proved by Miss Vandegrift, took tea with the family, and appeared quite

cheerful. The next day Mrs. Smith paid her a visit, and then the disconsolate widow of the counsel's theory seemed as if nothing had happened, while Mina was regularly installed as master of the house. On the 28th of June, five days after her husband's death, she was at Watkinson's store with Mina, and ordered a new and expensive suit of clothes for him. It was on this occasion, as the witness told you, he "began to open his eyes" as to the Spaniard's real character, though to her the delusion was still complete. But these are all really trifles, and lose all positive and relative importance in the event which followed. The damning fact which defies all the sophistry of the counsel, and admits of no palliation or explanation, is, that on the 5th of July, twelve days after her husband's death, this prisoner, and the Spaniard Mina, were secretly married in New York. Yes! Gentlemen, married! Never forget this in all your speculations as to motives, and impulses, and inducements. The stipulation that had been made long before, was here ratified. The object of all hope and all anxiety was here attained. Prospect had become reality; and as the wife of the rich and noble stranger, she believed all the promises of her disordered fancy were verified, and the great prize was secured. Passion, too, had its influence, and in the full exultation of that moment she thought she was happy. It is this marriage which the counsel have called an imprudence and an indiscretion, and we have an explanation suggested as to its cause. This poor woman, say they, was left helpless and friendless, without a protector, and as a matter of convenience, and in pursuance of her husband's dying wish, she was led to take this luckless step. Who, Gentlemen of the Jury, has dared to insult the memory of the dead by such an assertion as that made by the prisoner through her counsel, that such was her husband's wish? No one but the prisoner herself. We have shown what were that husband's feelings toward this man, and had the prisoner ventured to call a witness to establish what is now alleged, we were fully prepared to disprove it. A marriage of convenience! a marriage of necessity! Not only unsolicited, but at first refused! This will not answer

either. Had the bridal letters never been written, this tale might have been credited. I have already called your attention to the correspondence between the prisoner and Mina, for another purpose; I will now for a moment refer to it, to show the utter fallacy of this part of the defense. The allegation is, that this marriage was reluctantly assented to by the prisoner as a matter of necessity, in which inclination had no agency, passion no share. Any other view of it would destroy the theory of the defense. We meet it by the exhibition of the confidential letters written by her to him, in which, in the unreserved confidence of connubial love, she utters the expressions of her doting fondness. Those letters have been read to you, and will be placed in your hands for careful perusal when you retire. I ask for them, your deliberate attention. If every unchecked passion, in a disordered and undisciplined mind found appropriate language, it is in these singular letters. They breathe all the doting fondness that ever loving mistress bestowed on man. Every line and every word are traced by passion—passion unchecked and uncontrolled—the very riot of the blood—and yet we are to believe that the author of these letters was dragged against her will to the altar, where she a second time plighted her faith, and that her true affections were buried in her husband's grave. If the counsel who are to follow me, can reconcile this inconsistency, I will promise them to abandon this prosecution, and let their client go at once on a weeping pilgrimage to that husband's tomb. By way of additional contrast, I will ask you to remember, too, that it was before the ink was scarce dry on the letter of the 8th of July, from Syracuse, in which, in a tone of playful fondness, she acts the absent mistress, when she returned home and displayed the scene of apparent woe which has been described by Mr. Sheetz. I take one extract from that letter at random, as a specimen: "Good bye, good bye, dear Lino, good bye. It seems a long time to wait till next Wednesday night before I meet the fond embrace of him who is so dear to me, as is my young General Esposimina. Once more, my dear, adieu, sais your devoted Lucretia," etc.—"I saw Mrs. Chapman in

church," says Mr. Sheetz, "after Mr. C.'s death. She appeared to be in great affliction—she was dressed in mourning. I had some conversation with her calculated to console her under her affliction. She also communed after her husband's death!!"

I have said that, down to a certain period subsequent to her husband's death, the prisoner was under complete delusion with regard to Mina, and I have endeavored to show what was the combined operation of the motive this delusion supplied, and disordered passion, in tempting her to the commission of crime. I now come to the time when that delusion was destroyed, and this wretched woman was left to the agonies of disappointment and remorse. I need but hastily refer to the facts. On the 18th of July, Mina left Andalusia for Baltimore, under the false pretense of seeing a sick friend, taking with him all the little valuables of the prisoner, on which he could lay his hands. In full confidence in him, she entrusted him with her carriage and horses, her watch, and a quantity of jewelry, which, as you know, she was destined never to see again. He left with her an ornamental chain, as a token of his fidelity. On the 20th of July she wrote to him a letter, breathing the same fervent passion, and repeating more than the ordinary protestations of unalterable affection. From Washington, Mina wrote a series of letters, by the aid of a translator, to the prisoner, of which I shall only say, referring incidentally to your recollection, that their style indicates either unbounded confidence in her capacity to believe anything, however absurd, or a sarcastic insolence, which, knowing that she was, beyond extrication, in his power, he did not care about expressing. How he checked her afterwards, when she did question that power, I will presently show. On the 23rd of July the prisoner, anxious at his protracted absence, went to the city, and there discovered, through the agency of Mr. Watkinson, that Mina was an impostor. The gay dream terminated here, and she awoke to all the horrors of desolation and remorse. It was not mere suspicion of deception, it was evidence—it was demonstration. The Consul disclaimed him utterly—Watkin-

son had found him out—no traces could be discovered of her property—the chain he had left with her was worthless—every part of the deception had been destroyed. On her return to her home and to her children, she searched his chamber, and there found the paper accidentally left by him which, for the first time, seems to have awakened a doubt of his affection for her. I mean the bill for lodging for himself and ladies at the hotel in Philadelphia. It was in all the agony produced by these discoveries, that she wrote the letter of the 31st of July to Washington, in which in the genuine language of a wounded spirit, she deplores her desolation, and reproaches her destroyer. That letter needs no comment from me. It was written from a once happy home, to him who had made that home desolate. It told a tale of agony and self-reproach, which would have melted any heart but his that seems never to have known a kind susceptibility. The hopes, which in the wreck of innocence had sustained her, lay broken around her, and the ghastly specter of a murdered husband stood by to mock the ruin. “I have no husband now,” she tells him in one part of the letter, and concludes with the utterance of that expression of deep remorse and self-reproach, which is so significant. “But no, Lino, when I pause for a moment, I am constrained to acknowledge that I do not believe God will permit either you or me to be happy this side of the grave.” Now, to what can that reproach refer? If innocent and blameless, why such language, and if guilty, what is the crime? These are questions for you to answer.

It is important to bear in mind, that the discovery thus made by the prisoner in Philadelphia, with regard to Mina, was complete. There was no room for doubt on her part, or explanation on his. If the Consul disclaimed him, the basis of the great edifice of deception which his ingenuity had raised, was gone at once. The disclosure made to the prisoner by Watkinson revealed her accomplice in his true character of an impostor and swindler. That her illumination on this subject was complete is manifest, not only from the letter which I have just read, but from the facts communicated

by her in her remarkable conversation subsequently with Mrs. Smith. Keeping in view what was the evidence of his imposture which she had, let us for a moment recur to it. You will remember, that the letter of the 31st of July, was never received by Mina, he having left Washington before it arrived. Within a day or two after it was written, the prisoner, and her sister, Mrs. Green, had a consultation as to what should be done in case he returned. "I had made up my mind," said the prisoner, "that I hoped he never would return." Whilst they were talking, Mina arrived, probably unconscious of what had occurred during his absence, or indifferent, knowing that he held the secret which could insure, so far as depended on his accomplice, his safety. He knew full well she did not dare expose him. When he came into the room she said, "Lino! leave me." He replied, with his usual assurance, "What is the matter? If an angel had come from heaven, and told me a wife of mine would behave so, I would not have believed it." She then said, "Lino, the chain you gave me is not gold." He replied, "If your affections are so slender as a chain, I can explain that to you." He then proceeded with the bald apology which Mrs. Smith has related to you, and gave an explanation, every word of which the prisoner knew to be false. That she did not believe it, is manifest from her answer to it. "Lino! my sister is not at all satisfied with this conduct." He said, "We had better be separated then—I find I have more wives than one to please." The prisoner replied, "The sooner, the better." He then said, in a tone that indicated his consciousness of power, "Remember, Mrs. Chapman, before I go I must tell you something." She asked him what it was. He said he could not tell her in her sister's presence, that if she would come into the other room, he would tell her. She went with him to the other room, and in a few moments returned, saying, "Sister, Lino is not an impostor, he is a clever fellow." On the witness very naturally inquiring what it was he told her, that so soon altered her mind, she said, "Well, Ma'am, that's of no consequence, it was something between ourselves." On the next day, or the day after, such and

so complete was the mysterious alternation of feeling, the prisoner gave this confessed impostor letters of introduction to her relatives and friends in New England, on the faith of which he nearly consummated a new scheme of infamy and ruin there.

That interview, and the sudden revulsion of feeling it produced, is among the unexplained mysteries of this singular history, and we have no evidence, and not even a declaration of the prisoner to tell us what then occurred. It is enough for the purposes of this argument, that it was sudden, and that it is unexplained. We have read of fairy tales, in which the magician, by the exhibition of some powerful talisman, could subdue resistance, and enforce instantaneous submission to his will, and, if I were permitted by conjecture, to develop the secrets of this scene of necromantic influence, I could attribute to the hero of this plot of death the possession of a magical power of as unbounded sway. I mean the possession of the fatal secret of her guilt. Cast him off! Expose him! She dared not do it, and no one knew it better than himself. He held the secret of her infamy and crime, and to that talisman her haughty spirit bowed. Their destinies were united by community of guilt, and loathsome as the alliance might now be, no mortal hand could sever it. I did suppose that the prisoner would have offered something in the form of evidence, to have cleared up this mystery. It has not been done, and I claim the benefit of the omission.

I come now to the last chapter of this eventful history, I mean the circumstances connected with the discovery of this murder, and the prisoner's flight. I have already, in the performance of the laborious duty assigned to me, occupied more of your time than I anticipated, and am admonished by my own exhaustion, as well as by the lateness of the hour, to bring my remarks to a close. I can, therefore, do little more than refer cursorily to the evidence, leaving it to your intelligence for its appropriate construction. You will observe that throughout this last act of the drama, the prisoner's conduct was most peculiar, and little consistent with the course which conscious innocence would pursue. All the ex-

planations she makes are false. All her disclosures are forced from her, and yet are artfully made to appear to be voluntary. She never makes what she wishes to be regarded as a confidential communication, but to individuals who, she thinks, have, or may have, suspicions, and never, in one of her intervals of most apparent unreserve, does she tell one-half of what it is proved she knew. And, last of all, the instant she learns of Mina's arrest, and that the eye of suspicion is upon her, she secretly makes her escape, and flies with her oldest daughter, to the State of New York. When Mina and the prisoner parted at Andalusia, in August, he was going to New England, they were destined never to see each other again till they met as prisoners at this bar. Almost immediately after he left this part of the country, the police were on his track, and by the accidental acquisition of the Washington letter, had their attention awakened to the development of greater guilt than his. About a week after Mina left Andalusia, the prisoner conversed about him with Mrs. Hitchborne, and repeated to her the old story which she then knew to be false, about his riches. Not a word was said about her marriage, or her husband's death. Almost immediately afterwards, Mr McIlvaine and Mr. Reeside visited her house, when the former gentleman had with her the conversation which he has related to you. He asked her various questions about Mina, to all of which she answered falsely. She denied that she knew where he had gone. She denied that she knew where he had been to. She denied that he had robbed her of her property. This was to her an awful and eventful interview, which, with the distinct recollections you must have of the eloquent manner in which the witness narrated it, I shall not attempt to describe. She was destined then for the first time, to hear that there was a suspicion as to the manner of her husband's death, and that the secret was in part betrayed. And you will observe, that so soon as the horror of the discovery passed away, this intimation too was met by a ready falsehood. "When I spoke of her husband's death," says the witness, "I certainly spoke with solemnity. She sat leaning on her arm, in great agita-

tion; she did not look me in the face, and from the time my object became apparent, there was a remarkable change in her countenance to a livid expression, as ghastly as anything I ever saw, accompanied by a convulsive heaving of the bosom, as if caused by an effort to restrain feeling; I thought she would sink under it, but to my surprise she recovered, and said, in answer to my question—No. I have seen nothing of the sort. Mr. Lino was my husband's kind nurse during his illness, and gave him the greater part of his medicines." At this interview she never mentioned her marriage. This visit you will see was the origin of her alarms and anxiety, and from that moment she began to guard against suspicion, by what she now claims credit for, her voluntary disclosures. On the Thursday following, she hears from her children that some of the police agents had been in the neighborhood, and had stopped at Mrs. Hitchborne's. That night, between nine and ten o'clock, after the family had gone to bed, the prisoner walked to Mrs. Hitchborne's, and told her she understood Mr. McInvaine and Mr. Reeside had been there, and asked if they had left any message for her. A strange inquiry this, for conscious, careless innocence to make. She then borrowed the newspapers for a fortnight past, and returned home. On the Monday following, she has a conversation with Mrs. Hitchborne of a still more significant import. The witness, in reply to a question about Mina, said she understood he was suspected of poisoning Mr. Chapman. What is the answer to this intimation? She said, "Is it possible!" and added, that she had never heard of it! "I told her," said the witness, "I was informed that she was married to him ten days after her husband's death. I asked her if she had any idea that Lino had poisoned her husband. She said she had not. She then asked me if her name was in the papers. She said she hoped not." The prisoner then, after some hesitation, admitted to the witness her marriage, and gave to her the justification which her counsel have repeated to you here. This conversation occurred at the prisoner's house, where the other witness, Mrs. Smith, was then residing. We have next a confidential communication to her. The pris-

oner asks Mrs. Smith to send one of her children to a neighbor's, for the newspapers, giving as a reason for not sending one of her own, that she had already been troublesome by often borrowing papers. After some reluctance, the witness agrees to do so. A few hours after, if so long, we have the voluntary disclosure of the prisoner to the witness, accompanied with great apparent candor, of the facts relative to her marriage, and all the artifices that Mina had practiced. After hearing it all, the witness said to her, "Mrs. Chapman, I should not be surprised if this fellow had poisoned your husband. She gave a sigh, and said, 'Do you think so?—those gentlemen intimated the same thing.' I asked, what gentlemen? She said, 'Mr. McIlvaine, Mr. Reeside, and Mr. Blayney.' I observed to her, I had not seen them. She said, 'No, ma'am, as you did not know anything of their business, I did not mention it to you.' I observed to her, I was very much shocked to hear it—I wished to be out of the place. Her reply was, 'Why, you know nothing—hearsay is no witness.' "

It is not material that I should dwell upon the details of her subsequent interviews with Mr. McIlvaine, as related by that gentleman. They require no comment at my hands. She never went to him till she heard, through Mr. Campbell, of Mina's arrest. She repeats all the falsehoods she had told to others. With all the appearance of candor with which she wished to impress him, she never, even when she tells the truth, tells half. She stated to him that she had no reason to disbelieve Mina's stories till she received the forged draft from Boston, and in short entangled herself in such a net of falsehoods as, with the knowledge the witness had, only served to strengthen suspicion, and confirm the belief that all was not right. The tales she told to Mr. McIlvaine were, to his view, significant comments on her intercepted letter, which he then had in his possession. On the 17th of September, the first intimation of her alleged agency in this murder appeared in the public prints, and on the 19th she fled. But, say the counsel—and they will permit me so far to anticipate reply, flight is no evidence of guilt. The innocent have fled. Pub-

lie opinion and public suspicion are fearful adversaries for a helpless woman to encounter. Gentlemen, flight always has been, and always will be, in a certain sense, the evidence of guilt; and the few instances we read of, of the flight of innocence, are but exceptions to the principle, and only show that the innocent may sometimes act like the guilty. I give the counsel the full benefit of the exceptions. I claim the full benefit of the principle.

It is not my duty to anticipate the argumentative part of the defense. Of the evidence that has been laid before you on the part of the prisoner, or the facts, I have but a word to say. I have narrated to you this history of crime and infamy from the beginning to the end, and have referred you in detail to the evidence in support of it. That evidence has been consistent and complete. Every individual who was supposed to know anything about this transaction, and who was within reach of the process of this court, has been produced and examined. The prosecution has withheld no testimony. On the part of the prisoner, we have had less frank disclosures. The only witness on the facts who has been examined here, is the daughter of the prisoner, a child of ten years of age. Of that child, beautiful and interesting as she is, I have no wish to utter a word of unkindness. Towards those who brought her here, I certainly have less gentle feelings. I am no casuist. It is a poor science at the best. But I am not so severe a moralist as to be willing to recognize, so far as human condemnation is involved, the guilt of the child who hesitates to tell the truth on whose utterance depends a parent's life. Gentlemen, when I saw that little girl exposed in this court to public scrutiny, and the gaze of idle curiosity, with her cheeks glowing with blushes, and her eyes suffused with tears, looking in doubt and agony at her mother and the counsel, and telling in trembling accents the history of her father's illness and death, you will, I am sure, believe me when I say, I felt that there was at least one individual who would never raise his voice in obloquy against her. I question much whether any one that witnessed it will forget the spectacle of yesterday. That child is pro-

duced here to discredit the evidence of Ann Bantom. It is for you to decide between them. The evidence, if it affects them at all, strengthens the testimony of all the others. It is incumbent on a party striving to discredit testimony, to do it by the best evidence which can be produced, and when we are asked on the isolated evidence of this little girl, to attribute perjury to a respectable witness, I meet it by the inquiry, why is not Mary Chapman produced, who would be a better witness, who knew more of this transaction, and who is now a resident in this town? I deny the right of the prisoner thus withholding better evidence than she has produced, to charge our witnesses with perjury, on the unsupported testimony of a single witness, and that witness her infant daughter. Mary Chapman, according to Lucretia's evidence, brought the soup upstairs from the parlor; she was of an age which gave her opportunities of observation; she was with the family all the time Mina was there, and she was the companion of her mother's flight. Why is she not produced? Why is Mrs. Green not produced? She is within easy reach of a subpoena. She could tell what passed at Syracuse, when she and the prisoner sat up all night talking about the prisoner's "pretty little husband." She could explain the mysterious interview at Andalusia after Mina's return from Washington. There are other witnesses, too, within the prisoner's control, equally important, and all, with the exception of the little girl, have been studiously withheld. This certainly is not consistent with the theory of innocence, of candor and propriety.

But then character! The prisoner has always borne a good character. This is greatly relied on. In the first place, I deny altogether that she had a good character, and I assert that even if she had, it would be altogether an inadequate defense to such a prosecution. This matter of character has been often, very often discussed; and I believe the result is an universal opinion, that it is one of those blemishes on the science of judicial evidence, which antiquity alone makes tolerable. If the witnesses who know what is called a prisoner's character, or in other words, who know what they

think about a prisoner, were to compose the jury, I can understand how those impressions and that knowledge might operate favorably or the reverse. But what are these impressions when they come to be uttered by a witness under the rules which restrain judicial examination on this point? Do you know what people say of her? Do you know her general character? I do: It is good. No other word can be uttered; no specification can be made. I do not understand how judges or juries can give such vague, second hand impressions any, the slightest consideration, when they are opposed to a body of positive or even circumstantial proof. But, gentlemen, I deny that this prisoner has made out her character. The utmost that the witnesses say of her is, that they never heard anything ill of her, and scarcely any of them have known anything of her for the last two years, while we have shown you that for a longer time than that, those who had better opportunities of knowing her real character than any of her own witnesses, considered it as bad; and that she has been long watched by the police as a person whose associations and conduct rendered her suspected. The few words which were uttered here this morning by the vigilant police officer who was examined before you, are alone sufficient to destroy this unsubstantial fabric of reputation which the counsel have been laboring so industriously to raise.

I have now, Gentlemen of the Jury, performed my duty, and here terminate my agency in this cause. That the experience of the last two weeks has been most painful, I need not again say. I have been placed in relation to a fellow being such as I never wish to occupy again. We have all been compelled to listen to details of crime and suffering, and have had no relief even in the accidental presence of innocence and peace. The decision of the great question involved here, is with you alone, and let that decision, be what it may, as the result of the honest exercise of your judgment, I shall be satisfied with it. You know too well what is due to yourselves, to your families whose security depends on the faithful execution of the laws, and to the great community of

which you are a part, to need a word of caution from me. If you think this prisoner guilty, you will say so; and in arriving at that conclusion, I say it most conscientiously, I believe you will have reached that point at which we have all been aiming—the truth.

One word more, and I have done. I cannot take my seat without adverting for a single moment, in conclusion, to the exhibition made by the prisoner, of her children in this Court. It is a subject to which I refer with great regret. But why has this exhibition been made? Why have these poor children been paraded here day after day, and night after night, to listen to the narrative of their parent's infamy, and to sit at that bar exposed to the contagion of the partner of her guilt? Was it to disarm the zeal of the prosecution, or wantonly to aggravate the anxieties of their position here? Was it to give a new impulse and new themes to the eloquence of the prisoner's counsel, or was it to move your hearts to pity, and to gain for her from mercy, what she dared not ask from justice? I will not do the counsel the injustice to suppose, for a moment, that they advised or approved such a course. It has been the result of other deliberations than theirs. Independently of all views of propriety and impropriety, they would not, I am sure, counsel such a step on the score of expediency, for there is a consideration connected with the presence of those children which has occurred to my mind more than once, and which is calculated to move any sentiment rather than commiseration. These children once had another parent—a father for whose fame, whose honest fame, no one seems now to care, and to whose memory not even an incidental tribute of respect has yet been paid. That father was an honest, industrious, and respectable man; who did his duty in this world faithfully and conscientiously, and left to his poor children the legacy of an unblemished name. He died by violence. Yes, gentlemen, the father of these children died by violence, and they are brought here to invoke mercy for the author of his ruin, and the contriver of his death. It is the mediation, the silent mediation of the most innocent for the

most guilty. I remember, not long since, meeting in a book, that it would be unjust to call a book of fiction, for it is truly a book of history and profound philosophy, a passage which I have taken the trouble to put on my notes, and which I need make no apology for reading to you. The traveler is describing his departure from one of the eastern countries, on the eve of a wasting famine. "I had left a storm gathering in Egypt, of which I thank God I witnessed not the bursting. Already previous to my departure, the consequences of the scarcity had begun to appear in many places, but it was only after I left the country, that the famine attained its full force; and such was, in spite of human expedients and every appeal to Divine mercy, the progressive fury of the scourge, that at last the regular ministers of worship, supposing the Deity to have become deaf to their entreaties, or incensed at their presumption, no longer themselves ventured to implore offended Heaven, and henceforth only addressed the Almighty through the interceding voices of tender infants: in hopes that, though callous to the suffering of corrupt man, Providence still might listen to the supplications of untainted childhood, and grant to the innocent prayers of babes, what it denied to the agonizing cry of beings hardened in sin. Led by the Imams to the tops of the highest minarets, little creatures from five to ten years of age, there raised to Heaven their pure hands and feeble voices: and while all the countless myriads of Cairo, collected round the foot of those lofty structures, observed a profound and mournful silence, they alone were heard to lisp, from their slender summits, entreaties for Divine mercy."

Gentlemen, the mercy this wretched woman does not dare to ask, she has brought these innocent children to ask for her.

February 25.

MR. M'CALL, FOR THE PRISONER.

Mr. McCall: Gentlemen of the Jury—The testimony on both sides being closed, it becomes my duty to address you again on behalf of the defendant. In the most ordinary case I might confidently ask, and you, I am sure, would willingly

accord me your patient attention. But when the life of a helpless woman is at stake, and when it is plain that she is the object of a prosecution pressed with almost unexampled zeal, I do not hesitate to believe that you will rather encourage than repress the honest ardor of those who have taken upon themselves the heavy responsibility of defending her.

It is easy to infer from the manner in which this cause has been conducted, that it is deemed one of the first importance. The counsel for the Commonwealth, who preceded me, addressed himself at once to your understandings, and your feelings. He told you that one of your neighbors, a fellow citizen—an inhabitant of this peaceful community, had been cruelly murdered, not by open force, which might have been resisted or repelled, but by poison, secretly administered by the unholy hand of his wife—the mother of his children. He painted to your excited imaginations the daring violation of the laws of the land; he carried you to your own homes, your own firesides, and your altars, and he pressed upon you with great felicity of thought and power of expression, the necessity of vindicating, by your verdict, the insulted justice of your country. No one is more fully aware than my learned and eloquent friend, of the powerful effect that images which thus “come home to the business and bosoms of us all,” are calculated to produce upon the human mind. He well knows, that if he can rouse your indignation, and enlist your feelings in his cause, the Commonwealth is safe, and that a verdict of guilty may be recorded against the defendant before your judgments have had time to cool.

But, Gentlemen, I trust that neither the arts nor the eloquence of our opponents will be capable of diverting your attention from the real merits of this great cause. I am convinced that you understand your duties too well to suppose, for a moment, that you come here for the purpose of finding a victim. It is, indeed, as you have been told, an awful consideration that you have before you the miserable remnant of a once happy and peaceful family; but the consideration would be yet more awful, if any feelings of prejudice, or mistaken notions of public policy, could induce you to refuse

to the defendant the full measure of justice which the law allows her. It is incumbent upon those who allege that the laws have been violated, to show, you, beyond the possibility of a reasonable doubt, that it has been done by the defendant who is now upon her trial. It is not enough for them to surmise or insinuate that she is guilty. More than this is required by the humanity of the law, and less than is required by the law will never induce you to render a verdict against a fellow creature, that may plant a thorn in your pillows to vex and torment you for the remainder of your lives.

I agree with my learned friends that you have an important duty to fulfill to the Commonwealth. You have also a duty to perform to the defendant. Duty is a broad and comprehensive phrase, and under it is included the protection of innocence as well as the punishment of guilt. For the defendant, however, I ask nothing more than the law accords to all, a fair and impartial trial—in which neither passion nor prejudice shall be thrown into either scale.

Let us, then, without further preface, approach the evidence which the gentleman, who opened the prosecution declared, would leave no doubt of the prisoner's guilt. I will tell you what the learned gentleman ought to have proved, and I will then test and examine, as well as my humble abilities will enable me, the proofs he has given. He ought to have sustained, by the best and clearest evidence, every material fact alleged in this indictment. What is the charge there made? That William Chapman died by poison—administered by this defendant. The act and the agent are therefore the two great questions presented for your consideration. That he died—no man, I imagine, is willing to dispute—but how did he die? By poison, or by natural disease? The Commonwealth allege the former. It is the very fulcrum on which the prosecution rests its lever, and our learned antagonists are bound to prove it by the best evidence that the nature of the case admits.

I know that it has been a matter of current belief throughout this respectable county—a matter taken for granted, as a thing, of course, hardly to be inquired into, that Chapman

did really come to his death by the deadly means alleged in the indictment. The newspapers have said that he was poisoned; and it has passed from mouth to mouth, and from press to press, till private opinion has become in a measure settled on the subject. But this, gentlemen, is very far from the kind of belief which the law requires of you in the conscientious discharge of your duties as Jurymen. It is a belief, founded not on private impressions, for these you were sworn to banish when you entered these walls, but on the evidence of the cause alone, that the law sanctions as a just ground of conviction. You must be able to say, with perfect safety to your conscience, that it has been proved clearly and beyond a doubt, that Chapman died by poison, before you can touch a hair of my client's head, or bestow a thought on the person by whom, or the manner in which, that poison was administered.

The law, founded on those great principles of universal justice, which God has written in the hearts of all men, has declared, that before you can convict a person of a crime, you must be fully satisfied that the crime has been committed. It were the merest folly to inquire as to the agent, while doubt remains as to the act. The learned Court will instruct you that this proof of the act, or as it is emphatically called—the *corpus delicti*—the very body of the offense, is an indispensable preliminary to all further investigation. It is requisite, to borrow the words of an admired author on the Law of Evidence (Starkie, vol. i. p. 509), “upon a charge of homicide, even when the body has been found, and although indications of a violent death be manifest, that it shall still be fully and satisfactorily proved that the death was neither occasioned by natural causes, by accident, nor by the act of the deceased himself.”

Dismissing, therefore, for the present, as irrelevant and misplaced, all consideration of the agent, and confining your attention exclusively to the act, let me ask you, Has the Commonwealth exhibited to you that full and satisfactory evidence that Chapman came to his death by poison, which is necessary for conviction in every capital cause?

To this first and vital point of the case, I respectfully solicit your attention, while, with all the diffidence which a sense of my own imperfect knowledge can inspire, I examine the evidence and authorities on which your decision must be founded. You have embarked on an extensive and a highly interesting inquiry, and I confess I was not a little surprised when I heard the learned gentleman say it was not a scientific one. It is eminently scientific. Else why this formidable array of venerable authorities invoked to speak the experience and the collected wisdom of ages? Why these learned practitioners brought miles from their occupations and their homes to enlighten you with the results of their own knowledge? You are now at the point where law and medicine unite their streams in the great ocean of science. Happily, however, you are not in the situation of the mariner, who pursues his devious track without chart or compass, or even star, to guide him. Our path is luminous, with the efforts of distinguished chemists and physicians, and the experiments of every year are pouring a blaze of fresh illumination on this once obscure and intricate subject. Under the auspices of an Orfila, Toxicology, or the Science of Poisons, has assumed the rank of a distinct department.

But, as if conscious that the medical evidence in this case was too weak and inconclusive to form the basis of your judgment, the learned gentleman has told you that all scientific evidence is inconclusive. If it were so, gentlemen, it should be utterly discarded by humanity and law. But let me, humble as I am, assert the dignity and the just claims of science. I deny that the proofs it affords are not capable of the highest moral certainty. I deny that if a metallic ring had been produced by the chemists engaged in this investigation, it would have been inconclusive: and I appeal to Christison himself, the very authority relied on for its inconclusiveness.

My learned friend will permit me to say, that he has been somewhat transported by that fury which he so indignantly disclaims, when he tells you, that it is for you to say, whether it is not probable that Chapman died by arsenic. A more dangerous, a more monstrous position never was advanced

in a court of justice. It strikes at the very heart of our criminal law. It tears down all the safeguards which the humanity of our law has fenced around innocence. God forbid that the life of any man should be suspended on the thread of a probability. No! Probabilities are banished here. It is moral certainty alone, which must govern your decision.

In examining the subject now before us, no better or more rational arrangement presents itself, than that which the order of time suggests. I shall pursue that arrangement, and consider the symptoms before death—the morbid appearances after death—and the chemical analysis.

First, then—do the symptoms exhibited by William Chapman indicate poison? or, to state the question differently, do they not also indicate natural disease? You have been asked with an air of triumph—which one of these symptoms is not a symptom of poisoning by arsenic? You are told that each individually and all collectively indicate poison—and that that is enough for the Commonwealth. Need I waste a moment in exposing the fallacy of the argument? It proves too much, and therefore proves nothing. What though they are symptoms of poison? The simple answer is—they are also symptoms of natural disease; they establish the negative as fully as the affirmative, of the issue—that Chapman died a natural death as conclusively as that he died by poison.

The time indeed was, when men were condemned to ignominy and death on the evidence of symptoms alone. Science, in its rapid march of discovery, has long since banished this doctrine from the forum. Such evidence is utterly weak and inconclusive, because it is equivocal. It is equivocal, inasmuch as the same symptoms are produced by various irritating causes besides poison; vitiated bile, for instance, from the collection of which, in the intestines, cholera morbus is said to arise, is a highly acrid and deleterious irritant. Dr. Phillips, whose intelligence and experience are well known to all of you, and Dr. Hopkinson, both tell you that the symptoms in this case are those of violent cholera, to which Dr. Togno adds, of violent indigestion. Dr. Mitchell informs you that the symptoms of arsenical poison are stated to

be those of cholera—not, as has been contended, of that terrific pest, on whose wings the angel of death has desolated the fairest portions of the globe, and in the short space of twelve years, swept twenty millions from its surface—but of the ordinary epidemic cholera of our country.

Let us, however, descend to a more particular examination of the symptoms in this case. In estimating their bearing and importance, we are met on the very threshold with the striking fact that neither of the physicians who attended Chapman during his illness, attributed his death to anything but natural disease. It is impossible that they could have had the most remote suspicion of poison. They treated their patient, from first to last, for cholera morbus. Their subsequent silence speaks conclusively on this point. Think you, that as honest men, they would have dismissed this subject entirely from their consideration, and suffered justice to slumber unavenged over a deed of dark and hellish atrocity? Their duty to their country and to themselves would have forbidden so criminal a misprision. But you are not left to draw this conclusion from their treatment or their subsequent silence. Dr. Knight told Mr. Boutcher on Tuesday afternoon, at a time you will remember, when Chapman exhibited all those alarming symptoms which terminated in death, and amongst them the burning pain that has been so much dwelt on, that he had symptoms of cholera morbus. Dr. Phillips, too, before suspicion was afloat, and prejudice had contaminated the public mind, told Dr. Coates that Chapman's death was occasioned by cholera morbus. So much for the opinion of the physicians who watched around the bedside of the deceased, and derived their knowledge of his symptoms, not at second hand, but from actual personal inspection.

What were the symptoms which gave rise to this opinion? vomiting and purging, the very definition of cholera morbus. The burning pain, too, in the stomach, which the poet has so forcibly described in the royal sufferer, who bids the winter to his burned bosom, is expressly mentioned by Christison, as an attendant of cholera—pp. 92, 239.

Coldness of the extremities, clammy sweats, feeble pulse,

and great thirst, are also enumerated by the writers, among the symptoms of that disease.

The deafness, which struck Dr. Knight as peculiar, is not urged as indicative of poison.

Such being the analogy between the effects of poison and natural disease, it is not to be wondered at that Dr. Knight deemed it a case of cholera morbus. It is true, as you have been told, that he cannot now account for the cause of the death; but from the specimen you have had here exhibited of the retentiveness of the doctor's memory, such an inability need not excite any extraordinary surprise.

He neither examined the discharges made by the deceased, nor the body after death, with any particular attention, and indeed seems to have almost dismissed the case from his recollection; for he cannot tell you what sort of medicine he administered from first to last.

With Dr. Phillips's testimony I shall detain you but a moment. He knows little, for he saw little. With the exception of the first visit on Saturday, he did not see Chapman till ten or twelve hours before death: when he was in reality a dying man. The appearances he then exhibited were those which ordinarily attend the instant approach of death. The cold, clammy and shrunken extremities—the creeping and barely perceptible pulse—what are they but the vestiges of ebbing vitality—the harbingers of approaching dissolution? The deep anxiety depicted on the features of the dying man—what is that but the stern impression which protracted agony graves upon the human countenance?

Granting, therefore, to my learned opponent all that he contends for, that these are the symptoms of poison by arsenic, to what does it amount? When you couple that admission with the fact that they are also the symptoms of natural disease—a fact, let me repeat it, established by the treatment, the conduct, and the open expression of the physicians whose judgment was based on actual observation, and not on mere recital by the testimony of the other highly respectable experts who have been examined in this cause, and by the concurrent voice of the grave authorities, that have

been referred to. Thus supported, I feel myself warranted in the broad assertion that the evidence of poison furnished by the symptoms, is utterly fallacious and unsatisfactory.

Let us proceed, then, in the second place, to an examination of the morbid appearances exhibited after death, and see whether the judgment can find a safer anchorage in them than in the symptoms. It is in evidence from the testimony of Dr. Knight, that Chapman's body presented what he calls a dark discoloration of the skin under the eyes and under and behind the ears. As to this, Dr. Phillips is entirely silent; and Dr. Knight himself formed no opinion of these spots at the time, nor did the appearance strike him as at all remarkable. Christison says that this appearance ought not to form, in any circumstances whatever, the slightest ground of suspicion.

Again: The body at a period of more than an hour after death is found stiff—and this rigidity of the muscles, which that accomplished undertaker, Mr. Boucher, cannot account for any more than for the preternatural death of his ducklings, is urged as another appearance of poison. Is there anything in this, that does not belong to the cold obstruction of death? It certainly did not strike the experience of Dr. Phillips as extraordinary, for he has not thought it necessary to trouble you with it. And as for Mr. Boucher, whose ability in these, the last sad offices of humanity, though he has had no experience in them for several years, I am not disposed to question, he was asleep upstairs when Chapman died. He is called down after the event—requested to undertake the laying out of the body—declines the unpleasant duty—sends a messenger for a neighbor who resides a mile off to officiate in his place, and waits till the return of the messenger before he commences his duties. After all this lapse of time, we are told that the muscles were stiff. The wonder would have been much greater, if they were not. The absence of rigidity would then have been as seriously and as justly urged, as its presence now is, in favor of poison.

But these are minor points. Let us proceed with Dr. Hopkinson to the burial ground of All Saints' Church, where

he went, on the 21st of September, at the instance of Mr. Ross, for the purpose of examining the body of William Chapman, which had then lain in the grave almost three months. It was the first exhumation that Dr. H. had made; and he has with a manly candor which adds grace to talent and accomplishment, acknowledged that it was imperfect. It was made under the current impression that Chapman was poisoned. The examination, if examination it can be called, lasted about three quarters of an hour, and was conducted by Dr. Hopkinson, with the assistance of Dr. Coates. Guessing at the internal state of the stomach from its exterior appearance, it seemed to them that the object of their examination was accomplished—that if Chapman was poisoned, they had the poison there. The stomach was removed and placed in a vessel; and contenting himself with an inspection of the large intestines, without examining the brain, heart, lungs, gall-bladder, or even the rectum, the doctor, returned, perfectly satisfied that if there was any poison in the case, he had it locked up in the stomach. In that respect I entirely agree with him, believing that if in reality there had been poison, chemical analysis would have obtained it from the stomach or its contents. None of the viscera but the stomach and the intestines were the subject of examination. The doctor has told you with frankness and truth, that in an investigation of this nature, involving the lives, the liberties and the sacred honor of men, no part ought to be omitted. It is much to be regretted that medico-legal investigations are not in this country, as in France, committed to the conduct of a medical board, appointed by the government, with a liberal compensation for the sacrifice of time and labor, which their responsible duties require. I trust the day is not far distant when the attention of our own State shall be directed to a subject so fraught with interest to the security and the happiness of its citizens.

What, then, were the peculiar morbid appearances in this case?

First. The remarkable freedom from putrefaction of every part except the head and face—and this ground my

learned friend is unwilling to abandon. Arsenic, he tells you, has antiseptic qualities, and in proof of this assertion he quotes, amongst other high authorities, the quondam student of medicine, Mina himself, who purchased the arsenic of Durand, for the pretended purpose of preserving birds. The authority, respectable as it may be considered, is not altogether to the purpose, for the question is not as to the effect of arsenic when applied in sufficient quantity to the dead body, but whether when administered to the living body, it extends its preservative virtues after death. If it does, are its antiseptic qualities expanded over the frame in general, or limited in their sphere to the immediate surface with which it is in contact? If the former, by what principle does it operate? By absorption through the blood, or by some mysterious change of the physical laws, which operate on the elements of organized matter?

These are great and serious questions—the solution of which is yet hidden in the womb of science; and in respect to which wisdom professes ignorance. Is any man bold enough to answer them? Certain it is that none of the medical witnesses in this cause has ventured to give a decided opinion on this dark and intricate point, and I presume that you gentlemen will not pretend to be wiser than the very sages of the art.

In support of his position, my learned friend has read to you from Christison several cases which strikingly illustrate the preservative powers of arsenic. The reports of those cases are not as full and satisfactory as might be wished, for we are not informed of any of the collateral circumstances which might have tended to retard putrefaction. What then shall we say to the numerous cases of poisoning by arsenic, where not only the ordinary rapidity of decay, but even an increased tendency to putrefaction, have been observed? I will take a weapon from his own armory. Will my friend stand by the great authority he has quoted? Christison reconciles the conflicting cases by the supposition that where the arsenic is not discharged by vomiting, and the patient dies soon, it will act as an antiseptic, on the stomach at least,

perhaps on the intestines also, while the rest of the body may decay in the usual manner; that on the contrary, if the arsenic is all or nearly all discharged by vomiting, not only the body generally, but likewise the stomach and intestines may follow the usual course of decay. How does this doctrine suit the prosecution? If the arsenic was not discharged why was it not found? If it was discharged, how does it account for the absence of putrefaction? The inconsistency is glaring.

I do not know that you, gentlemen, will deem it necessary to settle a question on which the most learned authorities are yet in a state of painful indecision, when the whole marvel is at once explained in a simple and satisfactory manner by the Rev. Mr. Sheetz. He has described to you with great particularity, the position of the burial ground—the sandy soil, and unusual depth of the grave. You cannot have forgotten the passages I read to you yesterday from Orfila's stupendous work on Juridical Exhumations, an imperishable monument of the untiring zeal and noble spirit of a man who has passed a life amid the festering remains of mortal corruption, with no other view than the advancement of science, and the benefit of the human race. He has exhibited by facts drawn from the observation of some hundreds of bodies at different periods after interment, the various causes which modify and resist that tendency to decay, by which we soon moulder into the dust we once so proudly lorded over. When the vital principle has fled, the elements which composed its dwelling house, disorganize and fly off from one another—to form the elements of new creations in the boundless circle of eternal change. For this purpose are requisite a certain degree of heat, especially of moisture, and the presence of air—and whatever has a tendency to exclude these, tends also to retard putrefaction. The sandy nature of the soil—the unusual depth of the grave—the absence of obesity in the individual—the freedom from fecal matter in the intestines, these are natural circumstances which explain the preservation of the body in this case, so satisfactorily, that Dr. Mitchell expressly renounces it as forming any part of the

ground of his opinion. I feel confident that you will attach no greater weight to it.

But then the herring smell emitted on opening the stomach? Did anyone ever hear of a herring smell in a dead body? "Is not that almost conclusive?" triumphantly asks my learned opponent. It is somewhat singular that with Dr. Mitchell's testimony, so cautious in its character, so impressive in its delivery ever before his eyes, Mr. Reed should attach such vast importance to matters which that gentleman entirely disregarded. "Nor can I," says he, "with the single comparative fact with reference to the smell, permit that to form any part of the foundation of my opinion."

To argue that a peculiar odor would not be emitted, three months after death, occasioned by cholera morbus, or other natural cause, simply because such odor has never been read or heard of, is to argue like the royal barbarian, who refused to believe the traveler's story, that in some portions of the world the rivers were chained with ice and supported men and animals, because such an occurrence had never come within the limited sphere of his observation. To infer that a thing cannot be, because its existence is unsupported by experience, is the weakest of all arguments in matters of science. For what does the aspiring and ever busy genius of man scale every obstacle of mountain, storm, and climate, bid defiance to oceans, delve into the bowels of the earth, conquer the very elements, but to enlarge the empire of science, and add new materials to the treasures of past ages. Nature is an exhaustless mine. We may labor to the end of time, there will yet remain some shaft unexplored, some vein rich in beauty and in knowledge.

See how the argument works on our side of the question. Where—in what book—by what authority—has the herring smell been appropriated to arsenic? We have heard much of a garlic smell, but the herring smell is entirely new, and in its novelty consists its evidence of poison. In this uncertainty of odors I think you will attach no importance to the one in question.

The stomach was found, Dr. Hopkinson tells you, covered

with a dark brownish mucus, and in a state of universal inflammation, bounded by its two orifices. The œsophagus, too, appeared inflamed, but how any conjecture can be formed of its condition, except by that penetration which can pierce through three coats of a stomach, I am utterly at a loss to conceive; for the examination, and with it our knowledge, terminated at its junction with the stomach.

Dr. Hopkinson, who never before examined a stomach three months after death, describes the appearances presented in this case as inflammation; while Dr. Togno, on the high authority of Orfila, considers them as nothing more than cadaverous phenomena, denoting the gradual stages through which the body passed to destruction, and regards the detachment of the mucous membrane from the muscular coat as decisive on the subject. Orfila, in his great Work on Exhumations, has unfolded the secrets of death's prison-house, and exhibited the thousand phenomena developed by the body after death. How difficult, then, must it be, three months after death, to pronounce on appearances as inflammation existing during life? The same observation may be applied to the spots spoken of by Dr. Mitchell. That is not the only embarrassment attending the subject. You have seen from the passages I read to you yesterday, from Dr. Yellowly's paper, the extreme difficulty of distinguishing between real inflammation and a mere vascular fullness. But, grant the appearance in this case to have been genuine, undoubted inflammation. Does it establish the action of arsenic, rather than any natural irritant? We have not been favored with a definition of inflammation, but are led to believe that it is an advanced stage of irritation, which may be produced by a thousand natural causes. Vitiating bile is a powerful irritant. Cholera morbus and indigestion are such natural causes. The inflammation of the stomach in cholera is sometimes intense. You have been told by the medical witnesses, and it is undoubtedly the doctrine of the best pathologists,^{18a} that it is impossible to distinguish between a high state of

^{18a} Christison 103.

inflammation produced by arsenic and that produced by natural causes. And yet you are asked now to draw that distinction.

I shall glance rapidly at the remaining appearances. The dryness of the intestines was the natural attendant on the absence of putrefaction.

The small quantity of matters found in the stomach need not excite surprise, when you consider the frequent discharges of the deceased, and the great length of time between the death and disinterment.

Dr. Mitchell expressly tells you that the intestines are found sometimes empty in cases of cholera morbus. The bloody discharge per anum has been strenuously urged as indicative of arsenic. This appearance is spoken of by Dr. Phillips and Mr. Boutcher, who were present after the death of Chapman. It was not observed during life, by Dr. Knight. Dr. Phillips says there was an involuntary discharge per anum, of a bloody serum, but he also tells you that involuntary discharges occur in all diseases in the last stages. Mr. Boutcher's account of the color is somewhat different. He cannot positively say there was any blood, he thinks the discharge appeared a darkish green. It has been urged as indicating an inflamed state of the rectum, which has been enumerated among the attendants of poisoning by arsenic. Supposing it to be really anything more than the ordinary discharge produced by the agony of expiring nature, upon what principle are you gratuitously to suppose, in the absence of all examination of the rectum, that that organ was inflamed. We are not told of any excoriation or ulceration. The discharge, if sanguinolent matter, might have proceeded from dysentery, or a variety of natural causes. If the rectum had really been inflamed, such inflammation must have been attended with very acute pain. Yet not a word of complaint escapes the lips of the unhappy sufferer. He complains of his head, and of his stomach. But neither Dr. Knight, nor Dr. Phillips, nor anyone else, has heard a syllable about the rectum.

Such, gentlemen, are the morbid appearances. They are

all, and every one of them, compatible with natural disease. In the words of Dr. Hopkinson, "A violent case of cholera morbus might present the same appearance after death, as this body." Is it then the too ardent belief of the advocate, or is it not rather the sober deduction of reason, that the evidence they afford is as weak and unsatisfactory as that furnished by the symptoms. Put both together. Weigh their united force. They may, for aught I know or care, amount to what Dr. Coates modestly styles medical evidence of poison. The external appearance of the stomach is, it appears, medical evidence of its internal condition. Medical evidence, you are told, can never be positive. It certainly does in this instance approach very nearly to guesswork. All that I have to say, and in that I have the authority of Dr. Coates himself, and of the best medical jurisprudents, is, that if this be medical evidence, it is not the kind of evidence which the law requires in a case of blood.

Let us pass then to the chemical analysis. To this the medical jurist looks as capable of yielding the only certain and introvertible result. Pathology and anatomy furnish, in this case, at best but a glimmering and uncertain light—a light which may delude and carry you into error, because it cannot enable you to distinguish between the effects of poison and natural disease. Not so with chemistry—that has a test past equivocation—a test which never lies—which, acting on the stomach and its contents, plucks poison from them, if there be poison there. I speak of the reduction of the arsenic to its metallic form and luster, the great—the final, the "crucial experiment," as it has been emphatically called—the only one, on which the mind can repose with safety, unshaken by doubt, and by a thought of the awful consequences which may attend mistake. I will not trouble you by repeating what is perhaps yet fresh in your recollection, the authorities I read to you yesterday, drawn from those sources to which we look for light—from England, the home of science—from France, the nursery of chemists—from Sweden, that boasts of a Berzelius. To these I added names of which our own country is proud, and ranks among the most dis-

tinguished of her sons. To the testimony of an Orfila—and a Berzelius, what need I add, what can I add? Their names are synonymous with all that is profound in science and imposing and venerable in authority.

Christison, speaking of reduction, says: “The great excellence of the test is, that the sublimed crust possesses so many highly characteristic properties as to render its equivalent to many other tests taken conjunctly, and to put it absolutely beyond the reach of every fallacy.”

Listen to the great head of modern chemistry: “As the law requires life for life, it is necessary that the symptoms which denote poisoning be confirmed by the real presence of the poison in the contents of the stomach and the intestines, or in the matters discharged by vomiting.”—*Berzelius, Traité de Chimie, vol. ii. p. 448.*

The position for which I contend, supported, as I believe, by these illustrious authorities is, that no chemical proof, short of the reduction of the arsenic to its metallic state, is sufficient to warrant a conviction in a capital cause.

It is this alone which affords

“An arch-like strong foundation to support
The incumbent weight of absolute, complete
Conviction; here, the more we press, we stand
More firm.”—

Our law, founded in the most obvious principles of humanity and justice, requires the fullest, the clearest, the most irrefragable evidence, before it imposes its awful sanctions. It must be evidence that does not admit a reasonable doubt. And can that evidence be considered full or clear, or free from doubt, when a process has been omitted, or, as in this case, been tried and failed, which would have set the stamp and seal of certainty on the fact. The last, the most important link in the chain is wanting—the golden link which is suspended from truth. The mind hesitates; it feels itself unsatisfied; it has not reached as far as it might—it has made advances towards truth—but it has stopped before it has grasped the final object of its research.

It is a well established rule in the trial of the most insignificant civil cause, that the best evidence, and the best evidence alone, shall be exhibited. If this be the rule where a few shillings are at stake, what shall we say when character and life hang on the event. Shall we allow inferior evidence to blast a man's reputation, and take away his life, than to settle a paltry claim against his property? God forbid.

Now, can it be for a moment doubted, that the actual reproduction of the metallic arsenic is a better proof of its existence than the varying shades produced by the liquid tests or the varying shades of a smell? Let your own reason decide.

Arsenic is a metal of a certain color, brilliancy, and characteristic appearance, which Christison says in the most decided and unqualified manner, can be mistaken for no other substance in nature. When this metal, thus peculiar in its appearance, is found in a suspected fluid, we can ask no more; research is exhausted, doubt is banished, positive and absolute certainty is attained. And, to make assurance doubly sure, if the liquid tests, when applied to the metal produce their characteristic results, the most fastidious judgment must acknowledge itself satisfied.

It is not so with the liquid tests, or the arsenical smell. At best, they furnish but presumption of the presence of arsenic. They open the track of investigation, they put you on the scent. It is reduction alone which brings the object within your grasp. Such being, as I conceive, the received doctrine of the present day, sanctioned by the most learned medical jurists of both Europe and America, let us apply it to the present case.

We proceed, then, to the laboratory of Dr. Mitchell, who, with the assistance of Mr. Clemson, undertook the chemical analysis of Chapman's stomach. The viscid mucus scraped from the walls of the stomach was diluted and submitted to the action of certain liquid reagents—substances which when applied to a solution containing arsenic, throw down precipitates of peculiar colors. Those used by Dr. Mitchell were the ammoniacal sulphate of copper, which throws down a bright green, probably known to you under the name of Scheele's

green—nitrate of silver, which produces a straw yellow—and sulphuretted hydrogen, the great detector of metals, which causes a lemon yellow precipitate. What was the result? Failure—total, absolute failure. Had the tests succeeded in striking their characteristic colors, still they would not have been decisive. The weight of authority is, that they are to be regarded as mere presumptive evidence of arsenic, fallacious, inasmuch as various substances besides arsenic, occasion analogous appearances. Here their failure was complete. Dr. Mitchell entirely disregards them in forming his opinion, and my learned friend has prudently abandoned them in his argument. But I will not abandon them—I hold them up here to your view, I insist upon them as a strong ground of the defense. They furnish me with a powerful argument drawn from the failure of an experiment conducted with all the skill and caution, which, in his absence, I may be permitted to say without fear of giving him offense, that very accomplished and able chemist is known to possess. But they did not stop here. The suspected substance was divided into three parts, and placed in three separate tubes, each of which underwent the same process, but all attempts at reducing the metal failed. The best evidence has not been, and could not be, procured. What is the inference? Does it not react, with overwhelming force, on all the presumptions produced by the liquid tests, the morbid appearances, the symptoms?

No poison was found. In the terse language of Dr. Togno, no poison—no poisoning. I cannot here forbear a remark on the manner in which the gentleman who preceded me poured the vials of his wrath on that learned and accomplished physician. He has, it is true, not as an obtrusive amateur, but a witness coming here under the process of this court, ventured to express his own solemn conviction, in opposition to the array of professional learning produced by the Commonwealth. And what is to be the forfeit of such daring presumption? His scientific reputation—and Mr. Reed, it seems, sincerely as he deplors it, is the priest who is to offer up the sacrifice. Permit me to say, without meaning any disrespect to the gentleman, that he has on this occasion acted

rather the butcher than the priest. Dr. Togno, he tells you, has himself furnished the weapon, and pointed out the "vital spot." With an air of triumphant satisfaction at having, as he supposed, demolished the Doctor by throwing in his teeth the very authority he relied upon, he read to you several cases from Christison, p. 48. Let me ask, do these cases, in the slightest degree, impeach what Dr. Togno said? In the words of the witness, as Mr. Reed himself has quoted them: "Christison, in every instance where he has analyzed the stomach of a person dying by arsenic, found the arsenic by reduction." Has the gentleman shown you, can he show you, a single instance where Christison and Orfila have analyzed the stomach of a person dying by arsenic, without finding the poison? When the learned gentleman has shown you such an instance, it will be time enough for him to triumph over Dr. Tongo's suicide.

But it is contended that that analysis has not failed. It is said that a strong garlic smell was produced, and the most fallacious of the human senses is, in a matter of life and death, made the ground of serious reliance in opposition to the unanimous voice of the most respectable authorities—to Christison himself, who tells you that it ought to be altogether discarded.

Both the medical witnesses examined on the part of the defendant, think the alliaceous odor is not to be depended on; so little reliance is placed on it by Dr. Bache, that in Fenner's case it was not sought after. Jaeger says "it is a very insufficient test." Berzelius, the great northern light, tells you "that it is always doubtful."—*Traité de Chimie*, vol ii. p. 452. Orfila does not consider it at all more decisive. In vol. i., p. 357, he says, "this character belongs to other substances;" "besides," adds this profound author, "does it not often happen that we are deceived as to the true character of odors? Mr. Vauquelin and myself were the reporters in a case of poisoning; the suspected matter was thrown for several times on burning coals, and twice only we thought we recognized the odor of garlic; we soon assured ourselves that this matter did not contain an atom of arsenic." But

authority, it seems, is, on this point, to be entirely disregarded. Boldness is the characteristic of the age. The world is now, for the first time, to be informed that Christison, and Jaeger, and Orfila, and Berzelius, have all been mistaken—grossly, inexcusably mistaken. And how has Mr. Reed endeavored to combat this powerful host of authorities? By an eulogy on Mr. Clemson's olfactory powers. He, it seems, can distinguish the shadow of a shade of a smell of arsenic. That is not all; the moment one among several tubes was submitted to him, he pronounced it, without hesitation, to contain arsenic. The little incident which occurred before your eyes, of the tube which he pronounced with equal promptness to contain mercury, when in fact no mercury was there, only shows the propriety of hesitation in matters so liable to deception and mistake. To err is the attribute of humanity, and Mr. Clemson will think I do him no wrong, when I say, that with all his well earned experience in the School of Mines, and the laboratory of M. Robiquet, he, too, may be mistaken in the shadow of a shade of a smell of arsenic.

But does not the failure of the attempt at reduction react upon and entirely destroy any presumption of arsenic raised by this garlic smell? The odor, you are told, is produced by the fumes of the volatilized metal, which crystallize on the internal surface of the tube, and form the arsenical ring. If there was metal enough to produce the arsenical odor, there was also enough to be reduced. Mr. Clemson tells you he has never been deceived in finding the metal when he has found the odor, and Dr. Bache thinks that if there were enough arsenic to retard putrefaction, as my friend contends, there was also enough to abide the final test. Why then was it not found? Why did it not abide the final test? This is the question which perpetually recurs with overwhelming force. The minuteness of the quantity of arsenic that may be restored to its metallic state by this process of reduction, is such as almost to exceed belief. Four or five grains of arsenic are said to be the smallest quantity that will destroy life. Yet we read of the 300th part of a grain being

thus detected in a pure solution, and Berzelius has reduced a quantity so infinitely minute, as not to affect his exquisite balance. Dr. Mitchell thinks that even in combination with the solids of the stomach, 100th part of a grain may be reduced, though with a modesty which we can appreciate without yielding consent to its justice, he says it would require more skill than he possesses. The sixth part of a grain, however, will unquestionably furnish three trials in even the most unskillful hands. These facts are too strong to be openly combated. Sensible of the force with which they must present themselves to your minds, Mr. Reed disposes of them in a very summary and convenient manner by the supposition, for I can call it nothing more, that the poison was entirely rejected during life, by vomiting. Be it so, I reply, what then becomes of Mr. Clemson, and his smell? What becomes of Dr. Mitchell's experiments? What becomes of the absence of putrefaction? Was there ever such a pattern of contradiction? They first boldly tell you arsenic is in the stomach, and then as boldly deny what they have just most lustily asserted. We are first told that the preservation of the body, and a strong garlic smell, manifest the presence of arsenic, and then with miraculous consistency we are asked to believe that the arsenic was rejected during life. And on what evidence? You have heard more of attempts to vomit than of actual vomiting. The appearance of the gall-bladder, as described by Dr. Hopkinson, has an important bearing on this feature of the case. It is represented as partially distended. Now, if the vomiting had been so frequent and excessive as completely to evacuate the stomach, without leaving a trace of arsenic behind, the gall-bladder would most probably have been found entirely empty.

We are now upon a plain matter of fact; one, too, of serious importance to the prisoner. Let us not indulge in suppositions and conjectures, however plausible and ingenious. The principle here contended for may much abridge the labor of a prosecution; but I doubt whether it will advance the ends of justice. Every man who dies with an inflammation of the stomach, and symptoms of cholera morbus,

may, by supposing the poison rejected during life, be proved to have died by arsenic.

The cases of Miss Blandy, decided in England, in 1754, and of Nairn and Ogilvie, in Scotland, thirteen years subsequently, have been referred to by my learned opponent, but I trust they are not held up as examples for our imitation. They are foul blots on the records of English jurisprudence. They were decided at a period when this interesting branch of science was in its merest infancy; in a country where, in the language of one of her favorite poets, "wretches hang, that jury-men may dine." In this country, and at this day, they would be considered as little less than judicial murders.

Mr. Reed closed his remarks on the medical evidence by reading to you the opinion of Dr. Mitchell, as to the cause of Chapman's death, and I shall conclude what I have to say on this point of the cause, by some observations on that opinion. I am fully sensible of the high consideration to which the testimony of that learned physician is entitled—a consideration derived from his well earned reputation, and enhanced by the impressive eloquence of its delivery. His opinion, however, must be tested in the same manner as that of any other individual, and if it shall appear that the conclusion at which he arrives is based in part on premises which have no existence, to build your faith on such an opinion would be to do him great injustice, and my client irreparable injury. His judgment is professedly founded on the symptoms, on the post mortem examination, and on the chemical analysis. If any one of these pillars of his judgment fail in any important particular, it must have material bearing on the whole conclusion.

The post mortem examination he acknowledges to have been imperfect; the chemical analysis yet more unsatisfactory. It is evident, therefore, that the symptoms which he detailed with such cautious particularity, entered largely into the formation of his opinion. One of these was the absence of delirium. How is the fact? Refer to the testimony of Dr. Knight, you will find that so far from his intellectual faculties being complete and unimpaired on Tuesday

evening, Chapman was delirious; his expressions wild and incoherent, his conduct was that of a man whose reason has been invaded.

He refers also to the preternatural rigidity of the body after death—Preternatural! I think he would scarcely have used the term if he had been present at the second examination of Mr. Boutcher, which satisfactorily explained that appearance by the length of the interval between death and the preparation of the body for its final and cheerless abode.

Another circumstance that exercised an important influence on his opinion, was the discharge indicative of a diseased rectum. Dr. Mitchell himself tells you it might be occasioned by a variety of natural diseases.

In speaking of the reduction of strength, and coldness of extremities exhibited by the patient, the doctor uses the epithet, "very extraordinary." If the term refer to the intensity of the symptoms, it has no foundation in the evidence. Does he mean that the symptoms themselves are unusual and extraordinary? I apprehend not; for, if I am not mistaken, they are enumerated among the usual and ordinary symptoms of cholera morbus.

In speaking of the state of the mouth, he uses the term parched, which certainly expresses a greater intensity of the symptom than dryness, to which the evidence is confined. Removing, therefore, from the catalogue those symptoms which either did not exist at all, or whose existence is satisfactorily explained, you have a case of sudden and violent attack, attended by sickness, vomiting, and burning pain; a small and tremulous pulse, a dry mouth, and calm dissolution. How analogous to an ordinary case of cholera morbus!

I submit, therefore, with the utmost deference, that an examination of Dr. Mitchell's opinion removes the sting from it, and leaves your judgment free and untrammelled by the high authority of its author.

I shall here take leave of the medical witnesses; in relation to whom, I have perhaps drawn too largely on your time and patience. Let the importance of the subject, and an imperious sense of duty, be my apology.

The conclusions to which I have endeavored to arrive are:

1. That the symptoms in this case do not establish poison, because they are analogous to natural disease.

2. That the morbid appearances do not establish poison, because they, too, are analogous to natural disease.

3. That the chemical analysis does not establish poison, because the liquid tests, even when they exhibit their characteristic colors, afford only a presumption of poison; but when, as in the present case, they fail to exhibit their characteristic colors, they afford not even a presumption of poison. By the concurrent voice of the best authorities, the garlic smell ought to be discarded as a test for arsenic. Reduction is the only test that is conclusive, and ought to be received in a capital cause. That test having been tried and failed, its failure reacts upon and negatives every presumption of arsenic.

Such, gentlemen, is the medical evidence of poison. The symptoms, the morbid appearances, the chemical analysis, are each imperfect, unsatisfactory, and inconclusive. To convict on the evidence of any one alone would be little short of murder. The warp and the woof are both rotten and unsound. What then must be the strength of the texture? Can the superstructure be durable which is reared on a foundation of such inherent weakness? Grant that the evidence is sufficient to satisfy a chemist or a physician, as a mere matter of scientific research. Does it carry conviction to your minds as jurors, engaged in an investigation of such awful solemnity and importance? Can you say, after the unequivocal testimony of the learned and able medical gentlemen examined on behalf of the defendant that you are morally certain that Chapman died by poison?

But that is not all: Our ingenious adversaries have thought it necessary to bolster up this part of their case by what they call an admission of the defendant. In a letter written by her to the Mexican consul at Philadelphia, she speaks of being paralyzed at the thought that it was probable her husband had been poisoned. And these expressions denoting the innocent confusion of a mind unable to realize what was then

reiterated from every corner of the State—what every newspaper throughout the country teemed with—the probability of her husband's murder—constitute the confession on which Mr. Reed has rung such loud and frequent changes in the course of his argument. How uncharitable and unjust is it thus to torture and misinterpret expressions the most natural and simple. I confess I can hardly speak of it without emotion, because it is neither right nor proper that a man's life should in the slightest degree be jeopardized by forced constructions and wire-drawn conclusions.

There is yet another grave and weighty proof of poison which has been seriously urged, but which it is difficult to treat with any degree of seriousness. I allude to the mysterious death of the poultry. It is contended that they too died by the administration of poison. The manner in which these unfortunate animals were thus cut off in the bud of youthful promise, whether by poison, or by fish water, or lime water, or what not, will probably long remain a matter of mystery and winter evening's conversation in Mr. Boucher's family. It was necessary, however, for the prosecution to connect their untimely end in some manner with the defendant. How to do it was the question. It was at first supposed that they too, like Chapman, must have eaten of the poisoned soup (made, you remember, with a fowl taken from Mr. Boucher's flock) which was thrown into the yard on Monday afternoon. Ann Bantom, however, settled that by saying that the soup was thrown upon the naked ground, and not into the paved gutter—and Mr. Reed has given the whole story its quietus by granting that there was no poison in the soup which was thrown into the yard. Indeed, the utter impossibility of connecting the calamity of the poultry in any manner with Chapman's death or with the defendant, was so obvious, that Mr. Reed soon abandoned the ducks to their fate.

I submit therefore, gentlemen, that the Commonwealth has failed in establishing the great and fundamental point of the cause that William Chapman died by the administration of poison. Let us suppose, however, that it has been

proved to your satisfaction, that Chapman was really poisoned—poisoned, if you please, by the very arsenic which Mina purchased. Are you, therefore, to believe that that poison was administered by the defendant? This is the next and most important question presented for your consideration.

In deciding on a question that must irrevocably seal the destinies of a human being, I feel confident that you, gentlemen of the jury, will proceed with all the cautious circumspection which the importance of the stake demands. If guilt shall openly encounter you, you will meet it with firmness and visit it with the terrible sanctions of the law. But I feel assured that you will not either with a view of gratifying the malevolence of the defendant's enemies, or of vindicating the insulted justice of your country, turn aside from the obvious high road of the evidence, to search amidst conjecture, mystery or suspicion, an apology for conviction.

It will be my duty on the present occasion to disentangle the web that has been thrown around the defendant, by the zeal and ingenuity of my eloquent friend who assists in the prosecution.

And I shall begin by claiming at your hands for this wretched female, that benefit which the law benignly extends to the meanest criminal arraigned for the most trivial offense—the presumption in favor of innocence. It is her birthright, as an American citizen. You cannot refuse it to her. I am sure you would not if you could. It is the corner stone of our criminal jurisprudence—a time honored 'monument of the justice and humanity of our laws—which has survived the rudest shocks of the most sanguinary ages. I beseech you, then, while you sit in judgment on the defendant, never to lose sight of the glorious principle whose application none of you can tell how soon he may have occasion to invoke—that every man is presumed to be innocent till he is clearly proved to be guilty.

This being the sacred privilege guaranteed to my client by the law of the land, I must solemnly protest against the mode of argument adopted by the Commonwealth in this

case. My learned friend inverts the law—rolls back the stream of justice. He presumes the defendant to be guilty—then exerts all his force and ingenuity to bend the facts to the unfavorable presumption; while every circumstance that weighs in favor of her innocence is construed into deceit, color, pretext, a stalking horse for murder. Gentlemen, is human life so cheap that it may be thus sported and trifled with? Such palpable injustice would shock the tribunal of an eastern despot. But in a land of enlightened freemen, in an age of light, humanity and philanthropy, it could not be for a moment tolerated. No; you must presume the defendant to be innocent—it is then your duty to say whether her conduct, and the circumstances of the case, do not harmonize with that presumption. This is the rule of universal justice—the rule which the learned Court will dictate to you, and on which I shall request you to found your verdict.

Keeping, then, steadily in view the great principles of the law, that every presumption is in favor of innocence, and that the inculpatory proof, however probable, must leave no room for innocence to co-exist: let us examine the evidence which the Commonwealth has presented you of the prisoner's guilt?

We have heard much in this case, gentlemen, about motive. It is the incessant cry of the prosecution; the defendant had a motive to commit this crime.

Who is there, I might ask, that has not a motive to commit crime? The world is animate with motive. Temptations and seductive allurements are spread in glittering profusion over the path of life—they arrest you at every step, and were it not so, what would remain for virtue to achieve? My learned friend pictured to you an enviable prospect of Andalusia in its bright days of innocence and peace. Under the touch of his pencil it grew into a little Eden. Joy beamed from every eye—the melody of heaven hung on every lip. Domestic happiness—the affection of a tender husband—the smiles of an interesting family—all these were powerful inducements to virtue and to honor—yet all these could the defendant sacrifice without a tear upon the polluted shrine of

avarice and unholy passion. Do you think that these considerations, which Mr. Reed has so eloquently described, weigh nothing against the criminal motive? When you tell me that the ruffian, hoary in crime, who has neither character to lose nor to acquire, has a motive even to destroy life in the acquisition of wealth, the proposition is intelligible; but that one who has ever borne a reputation free from stain—a communicant at the altar of her God—the parent of five children, whom she had taught to worship that God, bound to duty by every tie of religion, parental love and conjugal affection, should condemn herself to endless misery—her offspring to perpetual obloquy—depend upon it, gentlemen, the motive to commit such an act is lost in the inducement to abstain from it.

The love of money was one, but not the leading motive which Mr. Reed suggested. It is said that the defendant bowed before an idol even grosser than Mammon. You are told that every principle of virtue—every sense of shame—every feeling of common decency was consumed and extinguished in the lurid fires of criminal passion. A matron and a mother is accused of committing this crime for the purpose of enjoying the embraces of a guilty paramour.

I do not know that I am called upon on this occasion to defend the scrupulous delicacy of the defendant's conduct. Still, let her not rest under aspersions uncharitable, unjust, and unfounded in the testimony of the cause. If criminal passion had been the motive that actuated this defendant, could not that passion have been gratified without a husband's murder? Speculation, however, on such a subject is useless. I call your attention to the evidence, which alone can govern your decision. Passing by Mary Palethorpe, whose testimony, except so far as it contradicts the witness who succeeds, is wholly unimportant, comes the redoubtable Ellen Shaw—the head and front of the prosecution. Her testimony is ushered in with palpable contradiction, and glows throughout with malevolence towards the defendant. She describes to you the manner in which Mina presented himself at the house; a suppliant for alms and petitioner for

a night's lodging. She tells you with the utmost confidence that Mr. Chapman himself admitted him, and even repeats a conversation that took place in the house. Yet Mary Palethorpe and little Lucretia, both in the room at the time, and therefore more likely to be correct than Ellen, who was milking the cows in the yard, tell you that not Mrs. Chapman, but one of the boarders, opened the door and brought Mina into the house. With an intuitive perception, she seems at the first glance to have discovered the cloven foot of the stranger. He was a Spaniard, and to be a Spaniard was enough—the very name was, in her mind, associated with poison and the stiletto, and all that is dangerous and horrible. This virtuous maid would have you to believe that in the short space of one month after Mina's arrival, the defendant's conduct had reached such a height of bloated wantonness that she was actually compelled to leave the house to save her own blushes. Extraordinary delicacy! I fear the age has become too gross for such refinement. What, after all, did the witness see thus to shock and outrage her moral sentiment? She informs you that her business confined her pretty closely to the kitchen, which was in the cellar, where she had no assistance. This proves beyond a doubt the truth of what she herself told you, that "she had little chance of seeing them." I quote now her very words. Yet in the same breath she has the audacity to say—that the defendant and Mina were in the room together almost all the time—in a private room, too—as if there was something peculiarly private in their association—and yet this private room turns out to have been nothing more nor less than a common parlor. This is not all, however. Though her business thus closely confined her to the cellar, she seems to have known everything that was passing in the third story—for she is now able to testify that she has often seen the defendant in Mina's apartment. In support of this sweeping and unqualified assertion she has particularised two occasions. Once in the evening, about 8 or 9 o'clock. The question naturally arises—was the door open? If it was, it acquits the defendant of the slightest shade of impropriety. Was it shut? How then does it happen

that this virtuous female, who was obliged, forsooth, to leave the house for very modesty, comes at this hour of the night to the room of this dangerous Spaniard; so dangerous that, in her own language, a body did not know what he might do. On the other occasion she went for the purpose of receiving some direction from the defendant, and happened to find her in conversation with Mina. Was there anything criminal in that? She saw no confusion—no impropriety—nothing but an ordinary conversation.

Now, gentlemen, let me ask you as candid and liberal men, suppose that the defendant and Mina sat together, rode together, and talked together as much, aye, more, than all the witnesses have told you. Could anything be more natural or more compatible with her innocence? It is in evidence that Mina came to that house a helpless mendicant—that he was received there in the purest spirit of Christian benevolence—that he found a home in the bosom of their family—that he was regarded as a son by both Mr. and Mrs. Chapman. His supposed misfortunes excited sympathy; a sympathy which was not diminished by the story of his family and wealth. That they should have showered attentions, caresses, and indulgences on a Governor's son, whose grandfather owned a silver mine, was the most natural and at the same time the most innocent thing in the world. He was also avowedly engaged in acquiring the English language under the defendant's instruction. It is further in evidence that he was liable to frequent attacks of disease which required the constant attendance of those around him. Under all these circumstances, that frequency of association which has been made the subject of so much and so severe remark, is explained on the most innocent and justifiable motives. Yet this, I presume, is what Mr. Ross called divorcing herself from her husband.

But then the visit to Joseph Wright's! If anything were wanting to exhibit in broad relief the temper of Ellen Shaw's testimony you have it in this relation. I beg you to apply it as a touchstone to the rest of her evidence. According to the veracious Ellen's examination in chief, as I have it on

my notes, "Mina was lying down in Mrs. C.'s lap nearly all day and singing love songs, and when they arrived at Wright's they took a walk into the woods, and were gone some two or three hours." Standing by itself, unqualified and unexplained, you have here a scandalous outrage upon common decency. Now mark, I pray you, the mental reservation of the witness. She had just taken upon herself a solemn obligation to tell the whole truth; and yet it was only by the able cross-examination of my colleague that the whole truth was extorted from her unwilling lips, and she stood before you in all the moral deformity of wilful and malicious reservation. It turned out that the whole ride was an act of pure kindness on the part of Mrs. C. to accommodate the witness, who wished to visit a relation then at Wright's. They found the house a scene of the utmost bustle and confusion. Whitewashing, scrubbing, and other domestic operations drove them out of doors to seek shelter in the woods, while Ellen remained behind; not, however, till she had declined their invitation to accompany them; a fact which she did think proper to acquaint you with in her examination in chief. She forgot, too, to relate a circumstance which was also left for cross-examination to elicit—that this little butterfly, as she now indignantly calls him, had the presumption to light in her lap in the very same manner as in Mrs. C.'s. The defendant, too, sang love songs. O, wanton depravity for a matron and a wife! Yet these love songs dwindle gradually into two or three pieces of song, not one word of which can the witness remember, and this respectable lady on being questioned more closely does not appear to know the difference between a hymn tune and a love song.

Gentlemen, it is not the least precious of the much lauded benefits of trial by jury, that those peers who are to pass upon the lives, the liberties and the fortunes of their fellow-citizens, have an opportunity of seeing how far truth is discolored by the passions and the prejudices of the witness. I challenge you to point out in the whole course of your experience a more disgraceful instance of intemperate zeal than was exhibited by Ellen Shaw.

What think you of a witness who gratuitously infers that Mrs. C. came from Mina's room, simply because she met her on the stairs in the morning; who openly professes to found her opinions on the manner in which things have turned out; and who accompanies the admission, which reluctance could not conceal, that religious services were regularly observed in that family, with the sneering remark, much good did it do. Is this the language, the spirit, the deportment of a witness of truth, in a case where life is concerned? You marked the manner in which, like the hound whose energies are animated by the scent of blood, her zeal seemed to gather strength and her fury to swell upon her second examination. Though repeatedly pressed by the counsel when first presented, and even urged by the honorable court to state the extent of her knowledge, after five times solemnly declaring that she had told all she knew, she comes a second time before you to eke out her story with the miserable shreds and patches which her memory, excited by the image of the old woman who was picked up from the road to supply her place, had in the meantime conjured up. She volunteers in the cause of blood; she is willing to tell all she knows; I fear she is even willing to tell more than she knows. She now vamps up a story that Chapman, poor man, was actually compelled by the defendant to make his own bed, under the penalty of receiving a scolding, and going without his breakfast. Yet after all, it turns out that the substance of this ridiculous charge is confined to Chapman's helping his daughter to turn over a bed which was too heavy for the little girl to manage. She is now also able to call to mind a scene which took place during the defendant's absence at Philadelphia. This argus-eyed sentinel of her master's honor, ever "busy and insinuating," whispers into the ear of the distracted husband the surmise that his wife had eloped with the Spaniard and gone to Mexico. She has had the kindness, however, to impart to us the ground of her suspicion. She tells us that one day, which from her own dates must have been shortly after Mina came to the house, Mrs. C., while at work in her chamber, introduced the subject, telling the witness that Mina was a

dear young man, and that they were going to Mexico together. Now I put it to you, as men of common sense, whether it is possible to believe the defendant so utterly destitute of reason as to call her own maid servant, whose disposition towards herself and Mina she was well acquainted with, and make her the confidant of a deliberate scheme to run away from her husband and her children with a stranger whom she yet hardly knew.

Thus much for Ellen Shaw. It will remain for you in the exercise of that discretion, with which the law has peculiarly invested you, to say to what degree of credit testimony disfigured by such palpable prejudice and undisguised ill feeling towards the defendant, may be entitled.

I pass by, as entirely unworthy your attention, the little breaks in the harmony of the defendant's marriage life, which have been detailed and magnified by this and other witnesses. There is enough of serious matter in this interesting cause to occupy your time and attention, without detaining you with trifles like these. A cloud will sometimes float over the serenest sky. Domestic differences will occur in the best ordered families; but decency throws a veil over them which it is scandalous to remove. Let me, however, once for all, make a general observation on this subject, the truth of which every man's experience must have tested. The whole force and import, innocent or criminal, of expressions like these must depend on the peculiar manner, tone of voice, and circumstances under which they are uttered. Here you listen to the excited tones of prejudiced witnesses—you receive their partial construction, you view everything through the discolored medium of their jaundiced vision. The defendant might most innocently have told her husband she wished he was gone in such a tone and manner as to be consistent with perfect harmony and good nature. She is accused of being high tempered. It may be so. She has no doubt faults, which it is not my duty nor my wish to extenuate. There is one circumstance, however, in her history which to my mind entitles her to considerable indulgence. You will remember that from youth upwards she has been occupied in the duties

of public instruction. Is it to be wondered at if, during that time, she has acquired something of the authoritative tone and temper, which seem the natural attendants on a profession subject to a thousand daily irritations and to the exercise of which the habit of command is vitally essential? One little fact in the cause, which admits of no contradiction, speaks volumes in the defendant's favor. She lived more than twelve months under the same roof with Ellen Shaw.

Let us pass to the testimony of Mrs. Bache, whose importance in this prosecution I am really at a loss to conceive. She was at Andalusia two days in all, during which time she ate three meals in company with the defendant, at one of which, wonderful to relate, Mina sat at Mrs. C.'s right hand! Where, in the name of common sense, should he have sat? It is much to be deplored that neither the law nor Mrs. Bache has furnished us any rules to guide us on such occasions. Whether Mina sat at the head or the foot of the table, at the defendant's right or left hand is, I apprehend, a matter of much indifference to the merits of this cause. Table etiquette on a criminal trial! Gentlemen, if such trifles as these are to be seriously urged on a trial for a man's life, which one of us is safe, which one of us can say for a moment that his life is his own? But then, too, it appears that Mina, in conversation, gave Mr. Chapman a very ill look. That we can all very readily conceive, for he is certainly an extremely ill-looking personage, and did nothing but give us and you, gentlemen, ill looks while he stood at the bar. But I cannot understand on what principle of reason or justice the defendant is to be affected by Mina's good looks or ill looks, nor by the simple circumstance, that observing Mrs. Bache's expression of surprise, she naturally interposed with the explanation which the witness has related.

Mrs. Bache goes on to tell you that on the morning she arrived at Andalusia, the defendant was shut up in a room with Mina, avowedly for the purpose of attending him during a fit. Not a little has been said in relation to these fits. Slander has made a handle of them for the purpose of fabricating a foul and most malignant aspersion on the defendant. It

has been insinuated, and even openly urged, that they were merely simulated, put on as a pretext for guilty converse and association. In the name of Heaven, gentlemen, in the absence of all evidence that these fits were thus falsely put on for a guilty purpose with the privity and knowledge of the defendant, can anything be more scandalous, inhuman or unjust, than such an imputation? The kindest benevolence, the purest charity of life, that charity which ministers hope and consolation to diseased humanity, is thus converted into an unnatural agent of the defendant's destruction. Has the merest shadow of evidence been presented to you, that these fits were simulated, or that the defendant did not believe them to be genuine, not at all. Yet you are asked to presume, in the absence of all proof, first, that they were not real; secondly, that the defendant knew them to be false and acted on that knowledge. If she believed them to be genuine, and acted on that impression, it matters not to her cause, what was their real nature. That such was the sincere belief of this unfortunate, and in this respect, much calumniated woman, is placed beyond the reach of question by the evidence of the cause, by the letters which have been read to you; in which she speaks to him of his infirm health, and reminds him of her attentions to him during sickness—letters, you remember, written after Chapman's death, when concealment, if concealment were even desirable, was no longer necessary; letters never intended for your inspection, but written in all the secrecy and confidence of the most intimate communication.

Gentleman, will anyone but the vampire, that fastens and feeds on fallen reputations, say after this that the defendant knew those fits to have been feigned, and used them as a cloak to criminal association?

I shall detain you but a moment with the testimony of Ann Bantom, in relation to this portion of the case. She has seen Mrs. Chapman and Mina in the back parlor together, she has seen them ride out together. Can anything be more consistent with her innocence? It is in evidence that she was the managing person, the active superintendent of the

household, and in the frequent habit of taking with her her pupils in those rides, which innocent recreation or the business of the institution required. There is but one other circumstance related by this witness to which I shall call your attention, from the manner in which it has been magnified beyond its natural proportions. On Tuesday afternoon of the last week she was there, the witness, the defendant and the children were in the parlor where Mina had a fit. On his recovering, about dark, Mrs. Chapman requested them to retire. How long she remained in the room, five minutes or five hours, the witness is unable to say; but on going out on the porch, she saw that the window shutters were closed. A most extraordinary occurrence, to be sure. Very suspicious and unaccountable, that windows should be closed about dark! Gentlemen, is it not cruel that such ridiculous trifles should be seriously urged on a trial for life and death? The state of Chapman's feelings during the three days' absence of the defendant in Philadelphia, has been brought in judgment against her. You have been presented with a melancholy picture of a distracted husband, frantic with the injury afflicted on him by one whom he had fostered as a son. For a particular description of this heartrending scene, we are indebted to no less a personage than Edwin B. Fanning, the mysterious peddler, whom fame had blown into a portentous magnitude, wholly undeserved. Certainly a grosser imposition never was palmed on public curiosity; the mountains never labored with a more contemptible offspring. His importance vanished before the light of investigation, as some "extravagant and erring spirit" before the summons of the dawn. Some little good, however, he unintentionally did to the defendant, by adding another contradiction to the testimony of Ellen Shaw. She told you that the defendant and Mina went to Philadelphia, unaccompanied by any other person. Fanning says they were attended by her son William. On the evening of the second day of their absence he tells you that Chapman became uneasy, and he would have you believe that the wretched husband made him, stranger as he was, the depository of his griefs and the guardian of his

wounded honor; that he unburdened to him his afflicted soul, told him that Mina was an imposter, hinted his suspicions of his wife's fidelity, and even threatened instant vengeance on the treacherous Spaniard. Yet all this furious gathering of the storm bursts in a shower of gentle sympathy for the man whom he had just branded as an impostor, and whom he had sworn to kill. In the language of the witness himself, "he mourns with the mourner," he expresses no displeasure at the author of his shame, he attempts to comfort the disturber of his peace, the spoiler of his dearest joys—his sacred honor. After this, he gives the order on Mr. Watkinson; after this, he gives the order on Mr. Fassitt. Gentlemen, the conduct of Mr. Chapman is irreconcilable, unaccountable and absurd. If his feelings are to be invoked on this occasion against the defendant, his state of feelings afterwards neutralizes his state of feelings before. His affections subsequently displayed towards Mina is irreconcilable with his vengeance previously expressed—is a waiver of all suspicions which the busy Ellen had infused into his mind against the defendant and her conduct.

On the 16th of June, Mina purchases the poison at Durand's, and this is the damning fact which Mr. Reed told you threw a dark and lurid shade upon the prisoner's case. How does it affect the prisoner's case? How is the defendant in the slightest manner connected with that act—either by prior command or posterior consent? It is not even in proof that she accompanied Mina to Philadelphia on that day. The ingenuity of my learned friend has been sorely taxed to ferret out a connection between the defendant and the poison. If I understand him rightly, he does not allege it to have been purchased with her previous knowledge or consent. He supposes her all ripe and ready for the deed, and only balancing to take another look at the golden lure. Mina accordingly forges the letter from the Mexican Consul, and is supposed to come in bearing the poison in one hand, and Mr. Cuesta's letter as fresh credentials of his character in the other. Mrs. Chapman, till then, wavering and uncertain, is unable to resist this new testimonial of her seducer's wealth and grand-

eur, and plunges headlong on the bait. Gentlemen, the theory may do credit to my friend's ingenuity, but it has not the slightest foundation except in his imagination. The prosecution has not in this instance even the shadow of a shade of evidence to support it. To such forced and strange presumptions—to such ridiculous and unnatural hypotheses, are they compelled to resort in order to take away the life of this defendant.

On Friday, the 17th of June, Chapman, after supping heartily on highly deleterious food, was taken violently ill; and this brings us to the second great point of our present inquiry, the conduct and deportment of the defendant during her husband's illness. The allegations of the prosecution would lead you to believe that she had treated her husband on his bed of sickness with the most barbarous inhumanity—had permitted no one to visit him, and ministered not even the relief which Christian charity would have dictated, much less the tender attentions of a wife. What is the evidence to support so serious a charge? It is in evidence that on Saturday she was prevented sending for her family physician by her husband, who thought very naturally that the doctor would only give him medicines, and having, as you have been told, "some medical ideas of his own," he prescribed for himself some cholera morbus drops, which he kept about the house. On the following day the defendant sent before breakfast for Dr. Phillips, who soon arrived; and finding his patient indisposed, with a slight attack of cholera morbus, prescribed some gentle medicines—and let it not be forgotten, chicken soup was among the prescriptions.

The tragedy now approaches its consummation. The motives which for two months have been secretly operating, have reached their full blown maturity, and are now developed in as dark and horrible a deed as the sun e'er rose upon. On the 20th of June, if this indictment tell the truth, the defendant administered deadly poison to her husband, through the medium of chicken soup. Let us look at the evidence.

On the morning of that day, the defendant, who has been accused of refusing to administer the physician's prescrip-

tions, makes the soup which Dr. Phillips had prescribed. It certainly cannot be made a matter of objection that she assumed the duties of the cook, who was sick, and made the soup herself. Take Ann Bantom's account of the transaction, and see in what a maze of absurdity the charge is involved. According to her statement, Mrs. C. takes the soup in a bowl to the parlor for the alleged purpose of seasoning it. The witness follows her into the parlor, for the purpose of procuring something, she knows not what, from the closet, and having obtained her object, immediately leaves the room. And this is the whole extent of her knowledge as to the soup, till it is brought down into the kitchen near dinner time. She did not see the defendant put anything into the soup while in the parlor. She does not even know how, or by whom, it was carried up to Mr. C. But she saw Mina in the parlor with the defendant when the soup was taken up, doing nothing, to be sure; but still he was there, and suspicion asked no more. From the simple circumstances of the defendant's going into the parlor where Mina happened to be, is hatched all this story about poisoned soup, which is set forth in this indictment. You are asked to presume, without any evidence, first, that there was poison in the soup; secondly, that it was put there by the defendant while in the parlor. A more ridiculous and unfounded story never was attempted to be imposed on the credulity of twelve rational beings. But why need I remark on the absurdity of the charge? Only carry it a little farther. it crumbles to pieces in its own weakness. If the defendant was really guilty of having, in the language of the indictment, "mixed and mingled certain deadly poison, called arsenic," in this soup, was anything in the world more easy than to have thrown the remainder out of the window or disposed of it in a way that would never come to light? But no. She brings it downstairs. Does she request Ann Bantom not to give it to the children or the domestic animals, or even to throw it away at all? No. she places a bowl of poisoned soup, open and uncovered, on the dinner table of a common kitchen, to which her children had constant access—next to the very room in which those

children sat. What! was it not enough that she had destroyed the father—must she destroy her own offspring, too—her servants—all? Not content to sap the parent trunk, will she involve these fair scions in one wide-sweeping act of destruction? Believe it who can? It has no parallel in crime—history is mute of such iniquity—the remorseless hyena cherishes its offspring—and nature breathes into the most abandoned heart some feelings of parental love.

Struck with the monstrous absurdity of the story, my learned friend has again endeavored to supply it from the copious resources of his fertile ingenuity. He supposes, without a single particle of evidence to support the supposition, that the defendant took part of the soup from the bowl, mixed the poison with it, administered it to her husband, and then brought the remainder to the kitchen. Merciful heaven! Shall there be no limit to supposition—no bounds to conjecture? Better give up at once this useless mummery of a trial, and let fall the axe without torturing the victim. To hear such matters gravely urged on a trial for a man's life does indeed carry back the recollection to the tribunals of Venice and the days of English state prosecutions, when accusation and conviction were the same—when courts were sufficiently corrupt, and juries sufficiently venal, to catch at an apology for conviction. Those days are passed—but they live in history, an awful beacon for posterity.

Gentlemen, I fear I am only wearying you by insisting on matters of such simple demonstration. One word more and I have done with the soup. Let us admit the learned gentleman's supposition. There was no poison in the soup on the table. Ann Bantom threw that soup into the yard—how, then, did this harmless soup make such terrible havoc among the neighbor's poultry?

So much for this absurd and ridiculous story about the soup. Let us now examine Ann Bantom's account of the chicken. She tells you it was taken up to Mr. Chapman in the afternoon, brought down entirely, or almost entirely untouched into the kitchen, where it remained, till this economical domestic of her own accord threw it about dusk into

the yard. She cannot say whether it was left covered up in the pot when the soup was taken out, by whom it was taken out of the vessel or carried upstairs to Mr. Chapman; whether it was whole or in pieces; how long a time elapsed after it was taken up till it was brought down, Neither did she particularly notice whether, how much, or any of the chicken was eaten. You will not wonder at the imperfect knowledge and indistinct recollection of the witness when you reflect that the shed, not the kitchen, was the scene of her labors on that day. I ask, is this account satisfactory to your minds? Is it a usual thing? Does it fall within the range of ordinary observation and experience, that in a moderate and thrifty household a whole chicken should be thrown, uneaten, out of doors? Contrast this relation thus blurred with suspicion and stamped with improbability with the simple, straightforward, probable narrative of Lucretia Chapman. It is true she is the daughter of the defendant, and could not, therefore, escape the stroke which is leveled for the destruction of her mother. She is not to be believed because the blood of the prisoner courses through her veins. The sins of the parent are to be visited upon her innocent offspring. Gentlemen, I confess there was something in the open, artless, juvenile simplicity of that interesting little girl which carried to my mind resistless conviction of her truth. Could anyone listen to the serious and touching manner in which, with an apprehension almost beyond her years, she expressed her sense of the solemn obligation that was to pass her lips, and think that she was about to blast the morning of so fair a life with a wilful and deliberate perjury? Her relation, too, carries with it intrinsic evidence of truth; it is natural and reasonable; it is supported by all the probabilities of the case. She speaks with positive and pointed certainty of facts which came within her own observation, and which must have made a vivid impression on her memory. She was present in the chamber of her father when the soup and chicken were brought up together. "Pa ate a few spoonfuls of the soup, but he ate very hearty of the chicken," are the little girl's expressions. The chicken was a small one; and

the remainder left, after this hearty meal, consisting of part of the back, the neck and the wing, were brought down by her and placed on the kitchen table. These are the pieces which were thrown into the yard, and which Ann Bantom calls a whole chicken. I think, gentlemen, that you must long since have been satisfied that the whole story of the chicken soup as related in the indictment is one mass of absurdities. Every attempt to fix the defendant with any specific administration of poison has entirely failed. It is only by vague inferences, drawn from her conduct, that the charge is attempted to be established. Let us return to an examination of that conduct during the period of her husband's illness. It has been repeatedly represented by the eloquent counsel for the prosecution, as unbecoming a wife, unnatural and unchristian. She has been accused of refusing to send for a neighboring physician, on Monday evening, in spite of all the urgent solicitation of the peddler—what was the reason? Fanning himself tells you—their apprehension of giving offense to Dr. Phillips, the family physician. The next day, however, a neighboring physician is sent for; and the cry now is, why did you not send for the family physician? The truth is, the family physician was sent for on Tuesday. Dr. Phillips received a regular application on that day, though he is ignorant of the source through which it came. Dr. Knight, who was called in on Tuesday afternoon, visited Mr. Chapman as often as the character of his disease required. On Wednesday, Dr. Phillips arrived, and a consultation of two physicians is held. Will it be said, after this, that there was any want of medical attendance? But this is not all. It was surmised, and even openly alleged, that the defendant refused to administer the physician's prescriptions, and thus cut off every avenue to hope. Where is the evidence of such extreme inhumanity? Dr. Knight knows of no refusal or neglect to administer the drugs prescribed. One thing is certain, that medicines were bought at Mr. Vandegrift's store. Was ever a defendant on a capital trial surrounded and beset with such extraordinary zeal? Her situation is one of unexampled hardship. When she does give

medicine, she is accused of mingling with it poison—when she does not give medicine, she is charged with barbarity and neglect. Act as she will, it is equally decisive of her guilt. Was there any want of personal attendance on the part of the defendant? Remember her forlorn situation—her servant sick—five children to take care of—compelled to assume the offices of cook, maid and nurse.

On Monday, Fanning came to the house after dark, and remained with the sick man till 10 or 11 o'clock. During that time the defendant was twice in the room. She expresses her gratitude to Fanning for his kind attention to her husband, and relieves him from the necessity of remaining there during the night, as she herself would resume her watch around his bedside. And yet this is what Mr. Ross called turning Chapman's friend out of the room! Dr. Knight, on arriving, found her in the chamber of his patient. Dr. Phillips has borne honorable testimonials to her wife-like deportment. He witnessed no want of tenderness—in his own words, "there was nothing in his last moments unbecoming a wife on her part." When exhausted nature demanded an hour of repose, she leaves word to call her if she should be wanted. And yet it is said that Mr. Chapman, dying, has no one to take care of him! No one to take care of him? Why, it is in evidence that, besides his two daughters, who alternately waited upon their father—even the neighbors were enlisted. Mr. Bishop was there; Miss Kemble was there; Mr. Boutcher was there. No, gentlemen, Mrs. Chapman's conduct during her husband's illness, was kind, tender, attentive, befitting a wife and a Christian mother towards the father of her children.

Chapman is dead. He descends into the tomb, and nature vegetates and blooms over the victim of a foul and unnatural murder—attention slumbers; not a whisper of suspicion is heard. So deeply buried in the shades of secrecy has been the commission of this crime. It is to accident, says Mr. Reed, the accident of an intercepted letter, that justice is indebted for the clue of this labyrinth of iniquity. I wish, sincerely, that it had come through a purer channel than a

violation of the sanctity of the public mail. Attention and curiosity thus excited, found enough in the conduct of my client, rash and indiscreet as I admit it to have been, to lay a foundation for the charge you are now trying. The current of public opinion, whose behests she had put at defiance, set strongly against her, and every day added new force to the stream of prejudice, till it swelled into the torrent that threatened to sweep our judgments before it.

We have now viewed the defendant's conduct from Mina's arrival till Chapman's death. Let us now trace it after that event, still applying the presumption of innocence, and see if it will not harmonize with that presumption. Chapman died on the 23rd of June, and was interred in the afternoon of the following day. Was the funeral hurried; the body concealed; any guilty uneasiness displayed by the defendant? Not at all. She reposes the melancholy office of her husband's burial in the care of Mr. Boutcher—mentions the names of some few friends in particular whom she wished invited; and requests him to do all that was necessary and proper in the usual manner.

On the afternoon of the funeral, Mrs. Hitchborn called to offer her consolations, and the conduct of the defendant during that interview has been made the subject of remark. Mrs. Hitchborn introduced the conversation by inquiring the circumstances of Mr. Chapman's illness and death, which the defendant, thus interrogated, very naturally and innocently related. There is nothing, therefore, in that. But then it seems that she requested Dr. Knight to prescribe for Lino's convulsion fits; and everything that she does or says in any manner connected with him is construed to her disadvantage.

What does the request prove? Nothing more than what I am disposed to admit—that she felt concern and interest in Mina's welfare. One thing, however, it does prove, it vindicates most triumphantly the defendant from one of the foul aspersions that have been thrown on her. If indeed she knew these fits to have been feigned as a pretext for illicit association, why should she at this period request Dr. Knight's pro-

fessional assistance? No jealous husband remained to watch over her movements. There was now no obstacle to the unbridled enjoyment of her will.

On the following day, Mrs. Smith arrives at Andalusia, and the defendant makes her appearance in a white turban, which, to some fastidious judgments, perhaps to Mrs. Smith's, may have seemed highly indecorous and unbecoming, but which is really too trifling a matter to deserve your notice. The defendant, however, did not exhibit all that appearance of external sorrow which Mrs. Smith and Fanning, who returned to this den of murder on the following Sunday, seem to have expected. Believe me, gentlemen, this is not the livery and the deportment of guilt. That would have exhibited itself in a flood of tears—a very tempest of lamentation. Had she displayed such grief, we should now be told it was all a solemn farce. No matter what may be the conduct she pursues, she is marked and devoted a victim for destruction.

The course of events carries us onward to a fruitful theme for accusing eloquence—the marriage of the defendant with Mina—the price of a husband's blood—the wages of guilt as it has been called—an act which more than any other has drawn upon her the odium and censure of the world. Well may she exclaim:

“Some sullen influence, a foe to both,
Hath wrought this fatal marriage, to undo us.”

The world saw only the act, the indecent and revolting haste, without any of the alleviating motives. It was not to be expected that such a violation of those decorous observances which have their origin in nature, and which custom has elevated into inexorable laws, should escape the heavy lash of public censure. Far be it from me to derogate from these established usages of life. I know that they tend to soften and to humanize mankind—that they brighten while they strengthen, the chain which holds society together. I do not know, gentlemen, that my duty on the present occasion, requires me to vindicate my client's character for del-

icate refinement and scrupulous regard for the decorums of life. If she has violated them, she is amenable not here, but at the bar of public opinion. She is not now on her trial for venial indecorum, but for crime, unnatural and hideous crime. But let me ask, are there no palliatives for her conduct? I feel that there are—strong and saving palliatives, and I appeal to you as parents, as men endowed with the ordinary feelings of human nature, whether this act, now branded with the name of treason, may not have had its source in the purest and most innocent of motives. Left upon the wide theater of the world, with a family of tender offspring looking to her maternal hand for protection and support, was she not bound by the most sacred ties of duty and affection, to embrace every honorable means of advancing their interest, and promoting their happiness? You will answer, Yes. And could this object be more effectually accomplished than by her union with one whom this infatuated woman yet believed to be all that he had represented—the rich—the noble—the grateful friend of her late husband—the object of his affectionate regard and confidence—to whom, in his last hour, he had delegated the sacred charge of protecting and defending her. Her belief that she was immediately to remove to another country, the inducement to the haste which the marriage was solemnized, is clearly manifested by her bringing her sister's family from New York, to take up their residence at Andalusia. I leave it then to your charitable candor whether this marriage is not to be accounted for on the most innocent and justifiable of motives—whether it is not consistent with that presumption of innocence which the law, in its humanity, requires you to make.

From Albany, on the 5th of July, she dictates the first of those letters, which the learned counsel, whose policy it is to stigmatize with depravity and guilt every part of the defendant's conduct, has made the subject of such serious animadversion. I confess, to me, who am totally inexperienced in matters of this sort, they appear exceedingly silly and foolish—nonsense, as she herself calls them, never intended for the eye of criticism—but entirely unworthy of

the vast importance that has been attached to them. "Passion guided the pen," it is said. One thing must have struck you forcibly stamped upon every page of this correspondence. If they breathe passion for Mina, they also breathe a passionate affection for her children, which the murderess of their father cannot, by any rule of human action, be conceived to have entertained. She speaks of her "dear sister," "her very kind nephew," in the same exaggerated tone of feeling. Remember to whom these letters were addressed—to a young man of a nation whose characteristic is warmth, and whose language is tinctured with oriental hyperbole, to a man, in short, whom she had married, and upon whom she leaned for her support, whose kindness and affection, so essential to her happiness, the cold language of distant esteem might have seemed to her little calculated to elicit.

The defendant returns from New York with her sister, to whom, with a kindness that does honor to her heart, she had offered a residence at Andalusia. On their arrival, they find Mina already playing the lord of his newly acquired dominion, feasting his august friends, the Mexican Minister and his secretary, dividing the spoils among them, and commencing his depredations on the defendant's property. Her confidence in him is yet unshaken. He goes to Philadelphia with her carriage and horses, and some other articles belonging to her, with the avowed purpose of visiting his friend Casanova, but in reality to seek new victims, and to find a wider theater for his comprehensive genius. On arriving at Philadelphia, he is informed of the decease of his friend, who seems to have acted through these transactions as a sort of convenient stalking horse for his schemes, who has displayed his friendship by bequeathing him \$45,000, and manifested his confidence by entrusting him with the administration of his will. He is therefore under the necessity of proceeding, forthwith, to Baltimore, but what is his dismay, when he finds on arriving that the laws of the country prevent his obtaining possession of the bounty of his friend. Thus disappointed, this Prince of Impostors flies for redress to the Executive of the nation, and pays three visits to the

President of the United States, in the hope of obtaining his assistance.

During the period occupied by these brilliant falsehoods, occurred the extraordinary correspondence which has been laid before you, and which my learned friend considers, of course, as another link in the long chain of the prisoner's guilt. To my mind, it is but a fresh development of the powers of deception, and seductive arts of this modern Proteus. It only exhibits additional proofs of the unsuspecting confidence and melancholy infatuation of my client. You have been told that his letters are bombast, and not intended to impose on the defendant. That they did impose upon her, no man in his senses can hesitate for a moment to believe. Her letters prove it beyond the possibility of a doubt. Could anyone hear those letters read, without shuddering to think how this wily serpent had coiled and fastened himself around the defendant? There was one string he never failed to touch, for he knew how powerfully it vibrated in a mother's heart. Her children—unceasing love for them—gratitude and affection for her—these are the passions breathed throughout his letters, ridiculous and bombastic as Mr. Reed very justly considers them. There is one, however, and the last of these letters, which claims a more particular attention, from the great importance that has been attached to it throughout this cause—and the manner in which it was pressed upon your consideration by the gentleman who preceded me. It is her letter to Mina of the 31st of July—the dark and mysterious letter, which first opened the scent for the ministers of justice. You are told with an air of emphasis of great significance and wisdom, that there is more in that letter than meets the view. I beg you to examine it with a searching, even a suspicious eye—put all its parts together, construe them with reference to the history of these transactions, as developed in the evidence, and then tell me as candid and honorable men, whether this letter be not the veriest bugbear of this prosecution, Fanning always excepted. If passion dictated the others, a keen sense of irremediable injury guided the pen in this. She began to tremble at the

situation in which she was placed. She had been to the Consul's, and discovered the falsehood of Mina's statements. She had been at Mr. Watkinson's, and there it was first hinted to her that he was an impostor. She had found upon her mantelpiece the proofs of his infidelity. It flashed across her mind that he intended to desert her—that he had married but to plunder her—and, having accomplished his treacherous and unmanly object, had left her to a second widowhood. To fill the cup of bitterness to overflowing, the man for whom she had sacrificed decency and braved public opinion, was then, perhaps, in the embraces of a "female friend," rioting in pleasure and in wealth, while she, destitute and abandoned, saw only misery and death in life's dismal perspective. Under the influence of these feelings, she wrote this letter now construed as the confession of a stricken conscience.

After dwelling in the agony of deep despair on her own loneliness and destitution—after recapitulating the wrongs she had received, and in a tone of the bitterest irony, wishing him to be happy, she breaks into the reflection, that God would permit neither to be happy on this side of the grave. She looks beyond the grave for the only refuge from the misery to which the Fates seemed to have doomed her temporal existence.

Well might she say she never could be happy. She may, as she has done, night after night, in the lonely cell of which she is yet the tenant, "wash her couch with tears." Life presents to her but a barren and a blasted heath. The recollections of how miserably she has been duped, the infamy of this public exposure, the mildew on a once unspotted reputation—these will torment her pillow to the latest hour. Her root is earthed. She clings to life by those little tendrils that twine around a mother's heart, with force divine and irresistible.

Mr. Reed, construing this sentence, detached from the rest of the letter, as an expression of remorse, tells you that remorse can be referred to no other crime than that for which the defendant is indicted. Though I am far from making the application, I cannot withhold my abhorrence of

so sanguinary a doctrine. He tells you that the person who commits one crime may commit another—that there must be nothing criminal to enable you to acquit. Gentlemen, is there no fury here? What! will you, like the Legislator of Greece, break down all the boundaries of crime, and wash out all offenses with blood? Justice, Reason, Humanity, forbid it. Apply the doctrine to yourselves, and think of the fearful account you must one day render if this be the rule by which Omnipotence shall regulate its dread decisions.

But we have not done with mystery. There remains yet another dark and mysterious transaction which my learned friend can only fathom on the supposition of the prisoner's guilt. Mina returns from his brilliant campaign at the South. He comes into the room where the defendant and her sister were sitting. Prompted by a sense of the injuries he had inflicted upon her, Mrs. Chapman commands him from her presence, and after stating her dissatisfaction at his conduct, expresses a wish for an immediate separation. Mina requests a private interview with her, and she returns to the room apparently reconciled to the man whom she had just denounced.

Suspicion at once takes the alarm. How, it is said, can this be accounted for, but by that close community of crime which chained her hand and foot to the caprices of his tyrant will? What passed at that interview, guilty or innocent, neither you nor I can undertake to say. What may you not believe that this master of deception, on whose tongue hang plausibility and deceit, told her a tale which soothed her suspicion, and restored her shaken confidence? Think you that if there had been anything in that interview that merited suspicion, the defendant would have been thus frank and unreserved in her communication to Mrs. Smith?

The spell that seemed to have enchained the judgment of my infatuated client was soon afterwards dissolved. Towards the close of August, Mr. McIlvain, accompanied by Mr. Reeside and Mr. Blaney, a high constable of Philadelphia, visited the defendant with the professed object of obtaining further information on the subject of Mina's impostures.

A private interview was requested and obtained in which Mina's frauds and villainies were the theme of conversation. Mr. McIlvaine told her that he had in his possession satisfactory evidence that he was a swindler and an impostor, and applied to her for information on the subject. She replied she could not believe him to be an impostor, and on being asked whether he had not plundered her property to a considerable extent, promptly answered, No. Both these answers, it is said, were false. She knew him to be an impostor, and she knew that he had injured her property. And in proof of this assertion her letter of the 31st of July has been referred to. I took occasion, when I had the honor of addressing you before, to say that the defendant had some claim to a reputation for truth, and that claim I think is not forfeited in the present instance. Mina had returned to Andalusia since the date of that letter, and the smooth-tongued villain had, with his usual plausibility, effaced the suspicions which that letter exhibits. It is in evidence that she was not acquainted with the real fate of her carriage and horses, till a period some time subsequent. The manner in which he explained the circumstance of the bill at the United States Hotel is also in evidence. But were it otherwise, let me ask you as husbands, and some, if not all of you sustain that relation, does the defendant's conduct merit any very serious reprehension? A wife is asked if the person to whom she has pledged the most solemn vow is an impostor, a robber and a plunderer. Is there any principle of ethics, any rule of positive law, which requires her to do such monstrous violence to nature—to tear asunder the sacred bond of union—to come forward as the chief witness to sustain a charge of larceny and fraud against her husband? I think not. If there were, it would be most unnatural and not to be desired, for it is that proud and romantic loyalty of feeling which, in all the vicissitudes of life's shifting scene, in disease, in misery, yes, even in disgrace, and the world's worst contumely, rallies round, cherishes and upholds the object of its allegiance, which is the brightest jewel in the character of woman.

But the conversation does not end here; and as the learned witness proceeds to communicate his impression that Chapman had died by poison, and that Mina had administered that poison, a marked effect is produced upon her countenance. He pushes the inquiry home, and asked her if nothing had occurred to excite in her mind a similar suspicion. A livid paleness spreads itself over her features; her bosom heaves convulsively. There is a fearful pause. Nature seems about to give way beneath the struggle. She recovers after a desperate effort, and replies—No, she did not think he could do a thing so diabolical. You have been told that this was not the exact emotion she ought to have displayed—that it was fear—the fear of guilty knowledge, not the surprise which the question ought to have elicited. Gentlemen, I am little accustomed to read the changes of the human countenance, nor do I profess to measure with nicety the shades of its expressions. But to my simple and untutored apprehension all this appears perfectly consistent with her innocence, and just what in her situation was naturally to have been expected. Mr. McIlvaine told you at the close of his testimony that he was then ignorant of her marriage to Mina. This circumstance is the key to what he considered her unsatisfactory demeanor on that occasion. You are bound to presume the defendant's innocence. Now imagine, if you can, the thoughts that must have crowded on the mind of an innocent woman married to the accused murderer of a once loved husband. When she was told that her deceased husband, instead of passing honorably to the grave, had probably perished by poison, that poison administered by one whom he had taken under his roof and cherished as a son—that she had married the parricide, under circumstances so capable of being misinterpreted, there was in that bosom a complication of emotions—an accumulation of horrors too great for human nature to support. The intelligence came like the lightning from the cloud, the avalanche from the mountain top, sudden and overwhelming. Surprise was there, but surprise soon yielded to dismay. There was a nation of antiquity that had no penal sanctions

for the crime of parricide. It was deemed an act which only demons could commit. The feeling that influenced that nation dictated the answer of the defendant. Let me, however, caution you against the fatal danger of relying on the expressions of the human features as an evidence of guilt. They vary with different individuals, with the fancy or the experience of the observer. Suspicion is ever apt to misconstrue and distort them. A thousand circumstances may alter or affect them. Will anyone of you undertake to distinguish, as Mr. Clemson did of the fumes of arsenic, the shadow of a shade of an expression of the human countenance? Will anyone of you undertake to say where innocence stops and guilt begins? Where is the line and compass for such an examination? Away, then, with such shadowy presumptions where life is the great stake at issue! The utter fallacy of all conclusions based on a foundation so unsubstantial is demonstrated by awful examples which blot the pages of our criminal jurisprudence and speak an impressive warning to you now. It is impossible to read of these human sacrifices without an inward horror. I trust in God, gentlemen, this case will not add another to the melancholy catalogue.

On the 10th of September the defendant calls, by the advice of Mr. Campbell, to inform the Recorder of the extent of Mina's injuries and impositions. She has received another evidence of his treachery and deception in the forged draft for a thousand dollars, sent to her from Boston. On coming to the city she has learned the fate of her carriage and horses. Light bursts upon her on every side. The delusion she has so long hugged vanishes before these accumulated proofs. She is now convinced that Mina is an impostor, and that she has been the dupe of his artifice. Mr. McIlvaine himself considered a full and unreserved development of Mina's frauds, as the only course that was open for her to pursue. That course she did pursue, and yet that course is now objected to, as an attempt to elude investigation and put the ministers of justice off the track. Her anxiety to be divorced from Mina is viewed as the last effort of the sinking mariner, who saves himself by whelming his

companion in the deep. Is it not cruel thus to pervert actions the most natural and simple? Was it not natural that she should seek to be released from the clutches of a monster that had brought her to the brink of this frightful precipice? It is objected that she sought a divorce from Mina! What! this crafty woman, represented as the very abstract of artifice and cunning, seeks, of her own accord, to throw aside the protection of the marriage contract, and render the only being on earth who had any knowledge of the horrid deed a witness to destroy her? An act of wilful and deliberate suicide. Gentlemen, this little fact must go home with irresistible force to your minds. It speaks volumes for my client's innocence.

I take it upon me to say that the whole conduct of the defendant after her first communication with Mr. McElvaine, so far from being criminal, is in every respect that of an innocent woman who is awaking from a dream of happiness to find herself ruined and undone. It was the agonized state of mind which induced her to unbosom herself without reserve to Mrs. Smith. We have seen in the progress of the mechanic arts, mirrors in which all objects are magnified in a fanciful and distorted manner. My learned friend holds such a glass before the actions of the defendant. Reflected from the pure and unsullied mirror of truth, they present nothing hideous or unnatural. In no part of the case is this better illustrated than in the defendant's visit to Mrs. Hitchborn. It is said that she evinced a guilty alarm. Anxiety she might naturally have exhibited; but alarm! where is the evidence of that? Understanding that Mr. McElvaine, with whom she had already had the two interviews just spoken of, had been at the house of Mrs. Hitchborn, who wished to see her, very naturally supposed it to be in reference to some message left for her by that gentleman. The surprise which she exhibited on being told that Mina was arrested in Boston, on suspicion of having poisoned her husband, and the anxiety with which she inquired if her name was in the public prints, exhibit nothing to excite suspicion. The dread of public exposure, and the nice sensibility to shame, which

dictated the question are honorable feelings, which belong not to a wretch so hardened in iniquity as they would now represent the defendant to be.

On the 17th of September, the defendant again called on Mr. McIlvaine for the purpose of communicating to him the grand scheme of imposture which Providence had mercifully defeated by Mina's arrest at Boston.

On that day her name appeared in a public print at Philadelphia, with this foul suspicion attached to it. She was now publicly held up to the execration of mankind as the chief actor in this bloody drama. She looked around her, but not a ray of hope cheered the impending gloom. In the whispers of suspicion she heard the faint murmurs of the coming storm; in the agitation that began to heave the bosom of the community she felt the trembling that precedes the earthquake. The paragraph in the National Gazette was the first bursting of the tempest that came rolling towards her head with destructive fury. Pressed on every side, distracted, with none to counsel or to guide her, she fled, and "flying, is undone." This is the consummation of the proof. Her own act, it is said, has affixed the seal to her own guilt. Pause, I beseech you, gentlemen, before you construe as criminal an act that is perfectly consistent with her innocence.

It requires no effort of research to collect trite aphorisms and hackneyed commonplaces about the cowardice of guilt. Experience, that best of guides, teaches us, however, that "consternation turns the good man pale;" that if the guilty tremble, the innocent will sometimes tremble, too. History, which has been described as philosophy teaching by example, records illustrious proofs. I might unfold to you its instructive page, and point to you bright instances of innocence quailing before the fear of popular oppression—of lion-hearted men, who have fled before unfounded accusation, and have not "stood the test."

What shall we say, then, of this defendant? A woman—whose sex the milder and the gentler virtues adorn and characterize—to whom the rude exposure of a court room is worse

than the worst of deaths—who was conscious that by her hasty marriage she had braved the world, and set at defiance its most sacred decorums, and who foresaw the terrible revulsion of public sentiment which awaited the disclosure of her conduct. We have seen that the event did not belie the anticipation. We have seen prejudice swell itself into a deluge—spreading wider and wider, till its surges even lashed these walls. I repeat it, then, in the peculiar and unparalleled difficulties of this defendant's situation, her flight is perfectly reconcilable with her innocence.

Such, gentlemen, are the leading circumstances which Mr. Reed has told you are sufficient to convict the prisoner at the bar.

That they are extraordinary, I admit—perhaps the annals of justice do not exhibit a parallel; but that they are dark and mysterious, and only to be reconciled with the prisoner's guilt, I utterly deny. Wretched woman! she has to contend not only with facts, but with the shadows of suspicion and clouds of mystery, which the ingenious prosecutors at every step raise around her conduct. Not content with that, their humanity would now tear from her the broad ægis which innocence presents to the attacks of unjust accusation—her good character. Not satisfied with destroying, they would now with a savage barbarity, tear the scalp from their victim. With a spirit somewhat at least allied to fury, they tell you that character is the worst defense—that you are not to regard those years of honorable life, which plead so powerfully in her behalf. Gentlemen, it sometimes happens that character is the only defense, the only refuge left for persecuted innocence. In a case of doubt, it is a panoply itself. And has not the defendant exhibited testimonials of her character that might be envied by anyone? The prosecution exhausted its quiver here. Its last and keenest arrow was directed at the past life of the defendant. But I trust I am not mistaken in the belief that it fell impotent and harmless at her feet. For what are the vague insinuations of a police officer, whose trade is suspicion, opposed to the positive and unqualified testimony of the numerous and highly

respectable witnesses who have been examined for the defendant, especially of the reverend gentleman of whose flock she was a member? With a manly charity that well suited his profession, he came forward without reserve in the defendant's behalf. Inexorable justice compelled him to say that she was a regular attendant at God's worship—a communicant at the holy table, and sustained in every respect a fair and unblemished reputation. That one who has borne with honor the offices of parent, wife and friend—whose hospitable charity the stranger and the beggar knew, should without passing down the regular steps and gradual declivities of crime, nerve her arm to the perpetration of a deed at which demons would shudder, is opposed to human experience, the safest groundwork of human judgment. While I ask you to regard the defendant's character as something better than the worst defense, I do not mean to claim for her an exemption from the frailties of human nature. She may have—she no doubt has, her sins to answer for—and which of us has not. Turn the scrutinizing eye of justice upon your own bosoms, and let him among you who can recall the scenes of his past life, without the whisper of an accusing conscience, let him cast the first stone.

"How would you be,
If He which is the top of judgment,
But judge you as you are. O, think on that,
And mercy then will breathe within your lips
Like man new made."

Evidence enough to convict! Gentlemen, I say it, and I say it boldly, that neither the dignity, nor the honor, nor the safety of this great Commonwealth require a conviction on such evidence as this. My learned friend has eloquently described the children of the defendant as lifting their imploring hands to avert the righteous doom of the law. Gentlemen, your own children lift their imploring hands against a conviction, founded on mysteries and presumptions. To convict in a capital case, where but a reasonable doubt floats across the mind, is to inflict a deep wound on the laws and constitution of our country. You are now treading upon

holy ground—upon the confines of Divine Power. You may not tamper with life. Liberty may be restored. Property may be the subject of compensation. Character may emerge from a temporary eclipse; but when the spirit that animates this frame is once extinguished, who but the mighty Being that created, can rekindle it? Remember that you are now about to establish a precedent. May it be one which your children will never have cause to regret—one by which you yourselves would be judged if, which God forbid, you should ever have the misfortune to be involved in what the prosecutors call mystery and suspicion. Long may you live as you have done under the faithful administration of mild and temperate laws. Long may you repose in tranquil security under the broad and protecting shade of the law—undisturbed by the fear of being compelled to defend your lives against forced constructions and unnatural presumptions.

I stand here upon lofty ground. I do not appeal to your sympathies on behalf of the defendant. I do not ask you to acquit her on account of those numerous relatives and friends who are looking with intense anxiety to your verdict—nor for the sake of those innocent children whose presence here has been so unjustly misinterpreted. No. I ask you to acquit her because I feel that her conduct is consistent with her innocence—because I feel that throughout these transactions she has acted under a miserable delusion—been made the victim of a designing impostor, and is now suffering the retribution which folly and imprudence never fail to bring upon their possessor.

Gentlemen, I resign the prisoner into your hands, as far as my duties on this occasion extend, in the confident anticipation that you will render a verdict of acquittal. In doing so, you will obstruct no end of public justice. On the contrary, you will rather advance it, for justice delights not in vengeance nor in sanguary exhibitions, but wrapped in stern integrity, high above the reach of passion and of prejudice, it never wings its lightnings, till guilt is too obvious for hesitation.

MR. BROWN, FOR THE PRISONER.

Mr. Brown: Laboring as I do, and as you gentlemen of the Jury must perceive, under a severe, painful and distressing indisposition, although permitted to commence my remarks, it is far from being certain that I shall be enabled satisfactorily to conclude them. As respects the advocate, this is a matter of indifference, compared with the all-absorbing interest of the defendant. However, if fate should decree this speech to be my last, I do not know that my professional or earthly career, can be more happily or more honorably terminated than in the just defense of an oppressed fellow creature—a woman—hapless, helpless, friendless, and forlorn.

This case is one of no ordinary importance, I may venture to say, even in your consideration, and to me it is a subject of awful and overwhelming interest and responsibility. Your position, however, irksome as it may be, is far less painful than mine, since it is within your power to do what I can only solicit; since you are able to avoid what I can only deprecate.

I appear before you, gentlemen of the Jury, a stranger in behalf of a stranger; but I rejoice in the reflection that justice knows no distinction, either local or temporal or personal; but is the same at all times, in all places, and to all persons. The only distinction that she regards is the distinction between virtue and vice—between innocence and crime; and it is upon justice, as thus understood, that we confidently rely.

If indeed it were necessary that your sympathies should be appealed to, what subject more fruitful than that which is here exhibited; what more sorry or more solemn perspective than that by which we are now surrounded and appalled? An individual who has run more than half the race allotted to mankind, stands here accused of the highest offense known to the laws of the land; that individual a female, with whose character we are ever accustomed to associate all that is lovely in tenderness, affection and fidelity. That female a wife!

charged with the deliberate murder of the husband of her affections—the partner of her bosom. That wife a mother! stigmatized and denounced as the fell destroyer of the father of her infant children.

There can, I say, be nothing in reality or fancy, to add poignancy to the accumulated and unparalleled afflictions of such an occasion. Did I say nothing? Alas, gentlemen of the jury, there is still one step further ere the soul is “supp’d full of horrors”—the conviction of the defendant. Let us pause and maturely meditate ere that awful step shall be taken—ere we deprive a fellow creature of that life which we cannot give, and which when once taken, we never, never can restore. Such a conviction completes—consummates—all that can be conceived of anguish on this side of the grave; and therefore should it be founded upon the most indubitable proof. If the evidence be questionable or equivocal, if the probations bear a hinge or loop to hang a doubt on, the obligations—the sacred obligations of the law, throw a vast and inevitable preponderancy in the scale of the defense. I say an inevitable preponderancy; and in saying this, let us not lose sight of another legitimate subject of preliminary remark and reproach, which has obtruded itself upon this cause; namely, the storm, the tempest, the whirlwind of prejudice, by which the unfortunate though guiltless defendant, has been assailed and surrounded, from the moment of these charges having been preferred. No ear has been protected from the accursed hebenon—the leperous distilment of pernicious rumor; of busy and active fabrication—presenting every variety of aspect, and uniting only in the obvious tendency to injure and destroy an unhappy woman, whom it is our imperious duty to believe to be innocent till her guilt shall be established. That storm of prejudice still rages, and still let it rage. Thank Heaven, there is yet one refuge left for the innocent and oppressed; there is one arm at least that is powerful to save. That refuge is the sacred temple of justice; that arm the omnipotent arm of the law; directed as we are bound to believe, even in its worldly influence, by a sovereign and overruling power. There is a special provi-

dence, we are informed by the Book of books, even in the fall of a sparrow; and it may therefore readily be conceived that the agonies, the throes, the torments of the human heart are not altogether unnoticed subjects of regard to the Creator of earth and heaven.

Yet still, Gentlemen of the Jury, terrible as it would be that the life of the defendant should be wantonly and unjustly sacrificed, it would nevertheless be comparatively unimportant. Time, the great physician, may heal the wounds inflicted upon the bosom of social or domestic peace; the life and the death of the prisoner may be alike forgotten; but avert if you can the sacrilegious blow, that is aimed at the maternal bosom of the law; the pillow where we must all repose in the hour of peril and distress—claim safety there, and have that claim allowed.

The life of one, or fifty individuals, may be considered as a mere unit in the vast sum of human existence—a mere pageant upon the extended theater of human action; but beware of the corruption of the sacred sources of Justice, “the fountains from the which our current runs, or else dries up”—the streams whereof, in the circling eddies of life, we are at one period or another all compelled to drink. Beware of this, if not for the hapless being now upon her trial, beware of it for yourselves, for the community, for a helpless and an endless posterity. We do not ask you to acquit an offender, but we do ask you, and the hardest heart cannot refuse us this, not to substitute the charge for the offense, the rumor for the evidence, the suspicion for the guilt. If you permit the sacred ermine of justice to be once stained or polluted by the blood of the guiltless, not all the spices of Arabia shall ever purify it; not all the rivers of Damascus shall ever wash it clean!

That there has been a death, no man denies; and in this valley of death, no man has a right to wonder; the wonder rather is, that we should live. We appear in the morning, and are cut down; and we wither ere the setting sun. But the laws of the Celestial Empire have no existence here. The unoffending widow is not with us, dedicated or consigned to

the funeral pyre, as the barbarous penalty of survivorship. The loss of one member of the community is not diminished by the unjust sacrifice of another. Absolutely the evil is doubled, and relatively its consequences are incalculably increased; as the example largely contributes to enfeeble and impair the general tenure and sanctity of life.

But, gentlemen of the Jury, if the mere death of a husband were even to subject his relict to such bodily tortures, upon what principle is it, that her character and her hopes and the hopes and happiness of those who belong to her, are to be eternally blasted and destroyed?

The prosecution, not content with this single victim, embraces all that is dear to her—in one fell swoop. The daughter who has been examined before you, as through the perjury of the child, the life of the mother only can be reached, may be considered on her trial. There is no difference between extirpating the tender ivy, and hewing down the parental oak, to which it clings, for its nurture, its shelter, and support. There is no difference between sacrificing this artless and interesting girl—tearing the tender flower from its native stalk, and destroying a loving and beloved mother, at the very period of life, when of all others, her attention and protection are most required.

Nay—the ravages of the Commonwealth extend even further than this. To say nothing of the aged parent, of whom she so pathetically speaks in one of her letters, and whom she so forcibly compares to the patriarch Jacob, on the loss of his son Joseph, whose sorrows were so great that he refused to be comforted; those prattling innocents whom you have seen here in their mother's arms, smiling as it were, at the glittering sword of Justice, suspended over a mother's head, neither plotting nor fearing harm—even their fate depends upon the issue of this cause.

The time shall come, and that ere long, when your verdict, should it affix crime to a mother's name, will enter deeply into their soul; the worm that never dies shall prey upon their hearts through life; and the curse that never spares, shall stigmatize their memory when dead. And long—long after

their bodies have quietly mingled with their sister clods of the valley, long after the eternal doors of the narrow house shall have closed upon them, their reputations, dearer far than life, shall be blurred and blasted, by the odious, and recorded imputations of this day.

But, say the learned counsel, these children are merely introduced for effect. We can only say that they were not introduced by us. We require no such aid against the prosecution; but as I have not requested their presence, neither have I opposed it. It demands a bolder spirit than mine, to defy the laws of nature, or to stand between the children and the yearning bosom of an afflicted mother, at that awful moment when you are about to determine, whether or not, they shall be separated—aye, separated forever.

I agree, however, with the learned counsel, that thus horrible as the consequences would be, nevertheless, if guilty, those consequences supply no defense. I advert to them only for the purpose of securing a becoming and just estimate of the amount at stake. Though we decide like fate, let us feel like men; and if the defendant were ten times guilty, where, let me ask, is the man, and who would envy his feelings, that could resolutely and recklessly pursue the prosecution of such a case, while every step he takes he tramples upon the feelings of a bleeding heart.

Having said thus much of the outlines and general character of this case, and of those emotions which belong to it, let us approach more nearly, and at once proceed to examine its more particular and essential features, which array and present themselves under the following inquiries.

1. Was the deceased poisoned?

2. By whom?

There was, as I have said, a death. Not sudden—the deceased was ill nearly a week. Not in the prime of life—he was advanced in years, and his sun was fast descending to the dark horizon of the grave. Not unexpected—expected by himself, calculated upon, as appears by his letter to the parson, a short time after he was taken ill; and by his con-

versation with Mr. Vandegrift, a few days preceding his demise.

But before we enter regularly upon the discussion of those inquiries, there are some other features of the argument or address of my ingenious adversary, to which I must invite your attention. This cause has been managed for the prosecution with great ability, and I am compelled to add, with unexampled zeal. The gentleman closed his remarks last evening with a beautiful passage from Anastasius, exhibiting the reliance of guilty parents upon the pure petitions of their infant children at the throne of Divine Grace. The passage was well chosen, and most admirably applied. But I marvel much, that the same gentleman who so strenuously deprecated the influence of sympathy in behalf of the friendless prisoner, should have condescended so frequently to invoke it, in support of himself and his colleague.

You are told in the very outset of this discourse, that unless this prosecution should prove successful the fault will be attributed, not to any deficiency of proof, but to a deficiency of ability on the part of the officers of the Commonwealth; that they forsooth will suffer in public estimation. They have given you the ocular proof of their unquestionable capacity. But suppose it were otherwise; has it come to this, that for the purpose of gratifying vaulting ambition, for the purpose of inflating professional pride, for the purpose of avoiding individual mortification, the majestic bark of justice shall be driven from her moorings, and the liberty and lives of the community set adrift? If they have harnessed themselves to the car of the Commonwealth, and its massive weight is beyond their strength, are you to listen to their supplications for help? Are you to apply your shoulders to the wheels? If Phæton will assume the reins and direct the chariot of Phœbus he deserves, and should endure, the fatal consequences of his temerity.

The counsel have not, it is true, invoked the aid of little children in their distress; it would have been wiser had they followed the Egyptian example; yet they have prayed most lustily for themselves, but Justice is inexorable, and deaf to

their intreaties—intreaties which, permit me to say, to my untutored ear, resemble less the mild and mellowed plainings of a contrite spirit, than the wild shrieks of a famished vulture, just pouncing upon her prey. I ask no sympathies for myself; I had almost said I disdain them; but I openly protest against their enlistment for the prosecution. Where is the man so reckless and so lost to honor, who in this momentous struggle against all odds, for the life of a fellow creature, will cast the sword of Brennus into the scale of the Commonwealth? If there be such a man, let him deny his name, as he must long since have abjured his nature.

Notwithstanding this appeal, the counsel assure us—assure our client of their kindness, their tenderness, and commiseration. *Timeo Danaos—et dona ferentes*—may it please your Honors: this is the kindness of Judas, kissing to betray—the tenderness of the tiger, covering to devour—the commiseration of the crocodile, mingling his tears with the life-blood of his expiring victim. We will endeavor to protect ourselves from their open hostility, but we earnestly implore you to guard and defend us, against the tender mercies of such a prosecution.

As a specimen of their deep condolence with the prisoner, they at first attempt by the assistance of police officers, to deprive her of the safeguard of character; and miserably failing in this, you are next told by them, that character is the very worst defense that any cause can have. Will this court and jury recognize that doctrine? Can they reconcile those inconsistent attempts? Character is always a good, and sometimes an only defense, in doubtful cases; and surely it is conceding enough to our opponents, to admit that this is a doubtful case. Character is a broad and secure shield, against which the pointless shafts of suspicion break themselves in vain. If the advantages of a spotless reputation be at all proportioned to the difficulties encountered in its acquisition, it may be confidently relied on. The attainment of character is an uphill work; the ascent is difficult, laborious and treacherous; but when we reach the glorious summit, after all our toils and perils past, Fame, with her own

hand, arms us at all points in celestial panoply, which, like the polished mirror, reflects without retaining, the calumny, reproaches and odium that assail it. Reputation, it is true, may be gradually lost; its safeguards gradually impaired; but whatever may be the particular, and hackneyed exceptions, which human nature supplies, I hold it to be a well established general rule, that it is never suddenly surrendered or abandoned, without some inducement or temptation, either actual or imaginary, commensurate with the importance of the sacrifice.

There is one other subject of comment, before I return to the systematic consideration of this case, under the inquiries proposed; and that is, the inference of crime from the supposed existence of motive: an inference from an inference.

In human tribunals, we generally ascertain the motive from the act, and not the act from the motive; and this improvement in moral philosophy, for which we are indebted to our learned friends, serves to remind me of a story related, not of an Egyptian, but a Turk, which I may be pardoned in recounting. Conforming to the sublime ordinances of the Koran, the Turks, it seems, had forbidden under severe penalties, an indulgence in wine, or any other intoxicating beverage. An officer of the government observing an individual with a jar upon his head, and discovering that it contained the juice of the grape, summoned him forthwith before the Mufti, and there preferred his complaint. The alleged offender acknowledged the wine, but denied the offense; whereupon the accuser rested his charge, as the prosecution here does, upon the probability of guilt, from the strength of the temptation or motive to commit it. Upon which, the prisoner observing in the hand of his adversary a glittering scimitar, immediately turned to the magistrate, and accused the officer of murder; and when called upon to sustain his charge, relied upon the reasoning that had been urged against himself. "That shining blade," said he, "is an instrument of death; I find it drawn and naked in your hand; if the mere ability to commit crime, be an evidence of crime committed, you stand arraigned and condemned upon your own principle."

It is almost unnecessary to add that the Turk was discharged.

“Man is prone to evil as the sparks fly upwards;” but we should be careful, not too far to confirm this doctrine, by its unthinking application. The object of evidence is the establishment of facts: those facts, when established, are what we denominate proof. But if from mere liability or inducement to evil, we are to draw satisfactory conclusions of crime, why then, to be sure, all mankind are flagitious offenders, and we the most of all. You have nothing to do but to read the indictment, to run over a string of truisms, or popular brocards on the subject of human iniquity, and the business of destruction is done. Your courts of justice virtually become slaughter houses, and you yourselves, the ministers of the law, instead of being sacrificers, are converted into butchers.

There is another view taken by the counsel of this case which, for its novelty, is deserving of attention. He contends that you must either find the prisoner guilty, or pronounce her entirely innocent. If he mean that the charge contained in the indictment cannot be qualified or reduced, so as to admit of a conviction for any inferior offense—if, in other words, he meant that she must be capitally convicted, or not at all, I concur with him. But if he intended to signify, and so seemed to set the current of his thoughts, that you must either absolve her from every act of imprudence and indiscretion, or else convict her of this heinous offense, I deny it totally. Even a general want of innocence would be in itself, sufficient evidence of the perpetration of a particular crime. If the mysteries of the case, as is said, cannot tally with the idea of innocence, they must cease to be mysteries, and become self-evident facts. If they are mysteries, they may comport with either innocence or guilt, and in that event, the condition of the defendant is the best.

Aware of their difficulties, you are told that crimes of this description are always committed in such a way as not easily to be discovered. So are most offenses; but does it follow, therefore, that where they are not discovered, we are to guess at a verdict, and thereby entail upon our consciences a heavier

crime than that which we unjustly condemn? What can we reason but from what we know? It is possible, it is true, that there may be guilt even where it cannot be ascertained; but it is also possible there may not be, and all that it is requisite should be said, is that the benefit of the possibility is with us, and the necessity of distinct and conclusive proof, with them. If they fail in this, the cause for all worldly purposes is ours; and the punishment of the offender must be left to that omniscient Power, to whose vision all the depths, darknesses, and recesses of the soul are revealed. "Vengeance is mine, saith the Lord, and I will repay." Let not sublunary tribunals audaciously and impiously presume to invade the sacred sanctions—to usurp the high prerogative of heaven.

To return now, from this discursive flight of the counsel, in which I confess I have been compelled to pursue him, to the more essential and substantial merits of the charge, I will in the first place proceed to show you—instead of adopting the chronological order of events—which probably would have been the most perspicuous arrangement, that there was no poison; and without making it an independent ground of observation, I shall also endeavor to satisfy you, should I even fail in my reliance upon this first broad shield of defense, that there is no sufficient reason for believing that this defendant participated in the offense.

It was a practice adopted by Sir Matthew Hale, one of the greatest ornaments that ever adorned the criminal jurisprudence of any country, never to allow any man to be convicted of a murder, until it was at least distinctly shown that a homicide of some one had been committed. Our own experience has furnished an ample illustration of the wisdom of this rule. In a sister State, two men were accused of the death of a third, and upon being arraigned, they both pleaded guilty to the charge, willing, no doubt, to terminate the horrors of remorse, of which they had long been the prey. The plea of guilty to such a charge is an unusual one; the public journals teemed with various accounts of the case; the day appointed for their execution rapidly approached, when,

lo! the murdered man appeared in their behalf, not like blood-bolter'd Banquo, "with twenty trenched gashes on his head," but in the possession of full health and vigor, and with far better prospects of protracted life than those by whom he was alleged to have been slain. The explanation is this: those two men who stood accused had lived in the same neighborhood with him; they had encountered him in an adjacent wood, and having had an ancient grudge against him, they proceeded to wreak their vengeance, and left him, as they supposed, lifeless. This, however, was a mistake, for, gathering himself up after they had left him, and unwilling again to confront them, he set out forthwith to some of the Southern States, as he had previously contemplated, where he remained, until apprized of the peril to which his alleged murderers were subjected; when he generously presented himself at the scene of trial, and afforded the ocular proof of their innocence.^a

The dead body is not more necessary than the *corpus delicti*—I adopt Dr. Togno's doctrine in its greatest latitude, when he says "no poison—no poisoning;" and it will afford me infinite pleasure also to show that this conclusion of a most estimable man, and intelligent physician is not only obviously correct in itself, but is in entire consonance with undoubted authority, and with the development of every feature, in the course of this important and protracted investigation.

Montmahou, in his "*Manuel des Poisons*," page 9, says, "The physician will not pronounce that there has been a poisoning until he has found the poison, and can designate and name it." And again, on page 11, "all the medico-jurists agree in thinking, that in order to pronounce with confidence, it is necessary to have found the poison." And, further, on page 13, he observes, after stating the importance of a chemical analysis, "we ought to use the greatest attention in the execution of the various processes employed; it should be severe, complete, and have for its result the re-

^a Trial of the Boorns, *ante*, p. 73.

duction of the metal. Indeed, we have arrived at the present day by rigorous analysis, to discover the thousandth part of a grain of poisonous substance, mixed in liquids, in solids, or even combined with our own tissues. It would be criminal to neglect the means which chemistry offers us, in order to hold to appearances often deceitful."

The learned counsel has told you, however, that as to his chemical tests, he does not rely upon them—you may throw them entirely out of the case. Wonderful condescension! If you throw them out of the case, do you not at once perceive that the condition of the prosecution is infinitely better than if they are permitted to remain? We insist upon them—we rely upon them—as a practical refutation of three-fourths of the hypotheses and theories which cling around the trunk of this charge, "like ivy to old oak, to hide its rottenness." The doctors all agree that no arsenic was reduced, upon the great and final test being applied. Everybody that has written, and all who have spoken upon the subject, admit that the reduction of the metal is the only infallible proof of its existence; and that it can always be reduced, even where the sixth part of a grain, or one-thirtieth part of the quantity necessary to produce death, remains in the system. Now, as it is admitted on all hands that the chemists were skillful, and that all proper means were resorted to by them for the purposes of discovering the arsenic—as it is admitted on all hands that it might have been discovered if it existed—and as it is also admitted that it was not detected, can anything be plainer than that it did not exist—and that all the reasoning derived from equivocal pathological symptoms, and an imperfect anatomical examination, are totally vague and visionary?—more particularly inasmuch as I shall have occasion to show you, that the appearances of those symptoms, and the results of that examination, are not peculiar to cases of poisons, but belong also to many cases of death from natural causes. To strike the chemical analysis from the evidence, therefore, is no stretch of magnanimity on the part of our ingenious adversaries, but upon the contrary serves only to show that in the pursuit of blood, they have taken

one step too far—one important step, and thereby redeemed us from the operation of all that had previously been attempted.

But, say they, if we cannot gratify your eyes, by producing the arsenic in its metallic form, we can at least tickle the nose by the alliaceous odor, which one of the experiments emitted. But, gentlemen, you are not to be led by the nose in a case of this character; much less are you to be governed by the noses of others. Mr. Clemson, the gentleman, who titillated his olfactory so often during the cause, with the pungent fragrant Natchitoches or Maccouba, and who was the only individual who arrogated to himself a superiority in the sense of smelling, did, it is true, pronounce boldly upon the alliaceous odor, as an infallible arsenical test; but he at the same time conceded, and Dr. Mitchell proved, and we all know, that the faculty of smelling is the most fallible and treacherous of all the human senses, dependent for its character upon a variety of natural and artificial causes; confounding different odors, affected by the state of mind or body, the nature of the atmosphere, the condition of the health, and an infinite variety of influences unnecessary to be considered. It is admitted the world over, that the sight, which even itself, as Macbeth says, is often “made the fool of the other senses,” is in point of accuracy and perfection, very superior to the smell. We perhaps may be able therefore, best to ascertain the value of Mr. Clemson’s olfactory, by testing it by the accuracy of his vision. You all remember, when asked by me, whether he could tell the arsenical ring by its appearance, he answered promptly, yes. I like a prompt answer, even in a case of life and death, when it is promptly right. I immediately produced the glass tube furnished by Dr. Mitchell, containing the arsenical ring, which was immediately declared by the witness to contain mercury. Dr. Mitchell was then called again, and explicitly stated that it contained no mercury; and he had a right to know, as it was his own preparation. Now, after this failure of Mr. Clemson’s best sense, what would you give for the rest? I oppose this dumb witness (exhibiting the tube) against

the nose of Mr. Clemson, and his eyes to boot. It is small, it is true, but it has a giant's strength. It is mute, unquestionably, yet it speaks with most miraculous organ.

But again: suppose the alliaceous odor has been perceived—I deny its infallibility—I deny its probability. All writers agree that, however it may be considered sufficient as a mere chemical indication of arsenic, and for mere chemical purposes, it is utterly unworthy of regard as a matter of conscientious reliance in a judicial proceeding. Even Christison, the god of their idolatry, declares it should be utterly discarded, and Berzelius, Orfila, Montmahou, and a host of other distinguished men, consider it as reproachful in the present state of chemistry, that it should be quoted as a satisfactory, or even a reasonable test.

On page 357 of Orfila, the most celebrated toxicologist of the age, we find this language:

"It often happens that doctors charged with making reports before a judicial tribunal affirm the existence of poisoning by arsenious acid, because they have found in the alimentary canal matter which exhales an alliaceous odor upon being placed upon burning coals. We severely condemn this conduct; in effect, the alliaceous character belongs to other substances, and it is not impossible that there should be developed in the stomach, during digestion, substances which exhale a similar odor when heated. Besides, does it not often happen, that we are mistaken in the character of odors? Mr. Vauquelin and myself were appointed reporters in a case of poison. The suspected matter was placed on burning coals at four different times, and twice only we thought we recognized the alliaceous smell, and we became assured soon after that it did not contain an atom of arsenic." The character of which we treat, ought therefore to be considered as an indication, and not as a proof, of the presence of arsenic."

Berzelius, notoriously the greatest practical chemist in the world, and to whom, by common consent, of all the most experienced and skillful manipulators, either in England or France, the proudest distinction has been accorded, thus expresses himself in relation to this subject:

"The reduction only is to be regarded as a certain proof, and renders all other evidence superfluous. When the reduction does not succeed, the result must be always doubtful, even when we think or believe we recognize the arsenical odor, upon heating with a blow-pipe or charcoal, the calcareous precipitate, obtained according to the

method of Rose; for an operator, little habituated to such essays, may often imagine he recognizes in the odor of animal matters contained in the precipitate, the presence of arsenic, while in truth there is none."

In addition to these great authorities, you have the direct testimony of Drs. Bache and Tognio, gentlemen who, it is true, have in all probability, run not more than half their career of professional usefulness, yet who have, nevertheless, from the spring of their fame, afforded ample assurance of an abundant harvest of future eminence and distinction. Modest, yet decided; skillful, yet cautious; they draw at once a broad and obvious line between the evidence, which will be sufficient to direct their inquiries after mere medical treatment, or chemical results; and that proof upon which they would be disposed to rely in a solemn judicial investigation. If, as medical men, or chemists, certain observations or experiments may have regulated their practice or opinions, in ordinary matters of doubt, they prudently consider them too imperfect and fallacious, to form the basis of absolute and conscientious reliance, upon a subject so awful and vital as this. They require, as the law requires, that the best evidence the nature of the case admits of, should be produced. They require that the symptoms should be unequivocal, or that it should be reasonably ascertained that no natural cause of death existed—before they feel themselves prepared to peril the life of a fellow creature, and their own salvation, upon the confident assertion of poison. "We would not be willing," say both those gentlemen, "to decide upon the presence of arsenic without reduction, because we would not be satisfied by any evidence except what we considered the best. The alliaceous odor is not to be depended upon."

But further: if the alliaceous smell indicate arsenic, it must be of course because arsenic is there. These fumes, we are told, are the fumes of arsenic—these fumes, we know, become condensed, and form the arsenical crust on the upper and cooler part of the glass. If, therefore, they were sufficient to prove its existence, they were sufficient, with proper process, to form the metal in its crystallized shape. I agree

that it is possible, that the odor should be perceived, without arsenic being detected; because it is probable that the odor may arise without the presence of arsenic, and from other substances, as has been shown; but I deny that the odor ever arises from arsenic, so powerfully as is here described, without the cause—namely, the arsenic, being satisfactorily ascertained and detected in its metallic form. Hence, I infer, that as zine, onions, garlic, the phosphates, and other substances may produce that smell—in other words, inasmuch as it is not the peculiar effluence of arsenic, that it was produced from other substances, and not from arsenic.

But say, they—there are the liquid tests, which, although all imperfect and equivocal, still make against the defendant, with the other proofs. What are these tests? Let me test them, for without pretending to be a proficient or expert chemist, I do profess to know enough of the science for this case; and I should be wanting in my duty if I did not. I have gone through all those experiments myself, with my own hand; bestowed months of attention and reading upon them, and I can only regret that still greater time has not been allowed for my researches.

The first test applied, as an almost universal detector of metals, is the sulphuretted hydrogen. This test, in arsenical cases, exhibits a flocculent appearance, and throws down a light, clear, yellow precipitate. In the present case, the test was very doubtful, as is stated; the yellow produced was a darkish and dirty yellow, and no precipitate was perceived. The other test was by the ammonical nitrate of silver—in other words, nitrate of silver dissolved in liquid ammonia. This test should have produced a still darker yellow precipitate, attended by the same flocculency. It failed to do either; and even if it had done both, it is allowed to be a very insecure test, unless amply sustained by those that follow and precede it.

The third test applied was the ammonical sulphate of copper, which presented an olive green instead of the Scheele green, which is about the color of verdigris. The olive green may be obtained much more perfectly by this test, from

ginger, stramonium, rhubarb, chromate of potassa, and onion juice, than it was obtained in the present instance.

I conclude, then, this branch of my remarks, by saying again, that the restoration of the metal is the only infallible test—I should rather say proof: it is the *corpus delicti* itself. The tests, as they are called, and as they have been referred to, are mere presumptions; and apart from the result, are not to be relied upon. Wherever there is metal enough unequivocally to abide those tests, the metal may be restored; and chemists have succeeded in reducing less than the 300th part of a grain; and wherever there is not enough thus to abide the test, there is not enough to guess at. The mode of restoring the metal is perfectly simple, and I will take leave to explain it to you. Having evaporated the liquid containing the suspected matter, to dryness; the dry matter mixed with pulverized charcoal, is placed in a glass tube hermetically sealed at one end. To this end you apply the spirit lamp, until the red heat is produced, when, if there be the slightest portion of arsenic, fumes of the smell of garlic will issue therefrom, and the metal itself, will instead of fusing, evaporate and form again in a condensed shape, on the upper and cooler parts of the tube.

But, says the gentleman, even had the prosecution succeeded in showing that the metal was reduced, the defendant's counsel might still argue the insufficiency of that fact. Reduce what metal? I agree, any metal, mercury, for instance, would not be sufficient, but metallic arsenic would be; and no argument, however ingenious, could possibly prevail against it: and no argument, in that case, would have been attempted. We unite with him in saying that you could not pretend to determine because you saw something glittering on the inner surface of a glass tube that it was arsenic; for even Mr. Clemson, with all his eyes about him, and after having imbibed the benefit of all the schools of France, most egregiously blundered in that very particular; and has thereby afforded us a salutary lesson of prudence, from a lamentable example of indiscretion. But the counsel forgets, if he ever knew, that it is not the mere appearance of the metal,

upon which skillful chemists and judicious men would be disposed to rely; but that the metal, being first detected, and its general nature defined by the success of antecedent tests, is upon reduction subject to other and subsequent tests, which present its character in a totally unquestionable shape; not dependent on the sight alone, the smell alone, the original tests alone, the reproduction alone, or the final tests; but upon all combined, and with all the clear denotement of its deleterious and peculiar arsenical properties. It is in vain, to tell us, that were all these evidences united, and each perfect in itself, errors might still be contended for, since authority, experience and reason concur in the utter impossibility of such errors. I admit, if you please, as the counsel alleges, that no one chemical result would be conclusive; and it is for that very reason that we require the evidence of various and combined results—all conducing to the same conclusion. If, as is contended, we should dispute the evidence in its aggregate, so much the stronger was the necessity for sustaining its particular items. Nay, if no one chemical result can form unerring proof, how much less can there be unerring proof where, as in this case, there was not one such result.

But we have shown, exclaim the gentlemen, triumphantly, that an individual of that house purchased arsenic in Philadelphia a few days preceding the indisposition of the deceased, and the prisoner was in town at the time of the purchase. That the purchase of arsenic, in relation to this charge, is a circumstance of guilt, need not be a subject of dispute, provided it be connected with the present defendant. It is not so connected. The allegation that Mrs. Chapman was in town on the day the arsenic was purchased is no evidence of participation in that purchase. But the fact was otherwise. She was in the city with Mina, it is true, upon two occasions, but neither of those visits was on the day of obtaining the arsenic. Indeed, it was perfectly inconsistent and absurd to suppose that an individual entirely conversant as she was with all parts of Philadelphia, and embarked, as she is said to have been, upon a dangerous and deadly voyage—should have

landed from choice upon this perilous and Ausonian shore—should have selected, for the first scene of iniquity, an establishment in the very center of notoriety, and within fifty yards of the residence of an old acquaintance of herself and Mr. Chapman. Was there no Romeo's apothecary—no caitiff wretch to vend this poison to her—no remote and obscure "culler of simples," upon whom she could have more securely relied in the purchase of this deleterious drug? Is she to seek the open and blushing face of day for the purpose of concealing an object of danger—to believe it were madness—or fatuity, at least.

Yet, say our opponents, admitting even that Mina purchased the arsenic without the defendant's immediate participation, it was nevertheless in prosecution of a common intent, agreed upon between them. If so, how do you dispose of the argument that the forged letter, written under the instructions of Mina, days after the purchase, and purporting to be from that excellent and accomplished gentleman, Mr. De Cuesta, was communicated to her for the sake of whetting her almost blunted purpose? Where was the necessity for it? if she had been previously so ripe and ready for this fell deed—as to cherish the damning thought of taking her husband's life—as even to be active in procuring the means of death—the fallen one had marked her for his own—the last feeble struggle for redemption had passed—and she was so deeply steeped in guilt as to require no further lures to vice—as to defy all further inducements to virtue. If then this forged letter were intended by Mina to deceive her—it was not, as the gentleman imagines, to confirm her in iniquity, but rather to win her to iniquity; and if thus to win her, it must have been because she was not already won—and if not already won, she could never have been a participator in thought or act, in obtaining the poison, which was procured several days before the letter in question was exhibited or prepared.

Taking leave of this portion of the case, and glancing with sad but comparative civility at the testimony of Dr. Bache, the learned counsel next springs with the fury and rapacity

of the hyena upon that of Dr. Togno—impugns its credibility—denies its modesty—defames and defiles its purity; and, to say nothing of unmeasured language, luxuriously indulges in deliberate, cold-blooded, unqualified and, allow me to add, unwarranted aspersion, for which the meager apology is offered, that there is left to him but this alternative, either to abandon his own witnesses, or speak plainly of ours. As to abandonment, so far as relates to the party-colored crew, drawn by the prosecution from the prisoner's household, they were, in one sense, abandoned, before they became retainers in this cause. In regard to the scientific gentlemen examined by the Commonwealth, they have been treated by us freely and fearlessly, it is true, as became the nature of the occasion, but nevertheless, frankly and fairly and respectfully, as was due to their talents and their virtues. We spoke of no volunteers—we assailed no motives—we impeached no hearts, though we liberally discussed the various opinions expressed, and the means and opportunities from which they were deduced.

If by "speaking plainly" the counsel mean contumeliously, his remarks have been as plain as a sunbeam, and almost as bright; but if, upon the contrary, he would be understood to signify a just adaptation of thoughts and language to the immediate subject of discussion, he will excuse my saying he has been guilty of a vast and unpardonable mistake—a mistake in first substituting himself for Dr. Togno, and afterwards applying to that highly respectable gentleman those observations and rebukes which, as counsel, he so richly merited—though so sparingly received. By what principle he has been influenced—by what master spirits he has been prompted or directed, we shall not deign to inquire, but proceed to repel the attack and, in doing so, the learned gentleman must not complain if we resort to weapons similar to those with which it has been made—" 'tis fit the artificers of death should die."

I should be a foe to fealty and to friendship, could I dispassionately stand by and complacently behold the counsel glutting his vengeance upon an unassuming and unoffending

individual who, actuated alone by justice and philanthropy, has imparted the valuable aid of his testimony to the present defense.

And is it not most monstrous and unheard of that a learned gentleman—himself a volunteer in pursuit of blood—a soldier who has eagerly enlisted in this magnanimous war, without even the temptation or inducement afforded by the bounty, should for the purpose of proving his loyalty and submission to the power he serves, not satisfied with wreaking his wrath upon the devoted head of the defendant, venture even to grapple with the integrity of a highly honorable man, for no other reason than because, forsooth, his evidence presents an impenetrable and insurmountable barrier between the Commonwealth and her intended victim.

Dr. Togno's language, I cite the counsel's very language, is "obtrusively adverse," and therefore the witness, we are told, shall have the melancholy consolation "of dying on his own sword." Heaven save the mark! The doctor could not die upon a more unsullied sword, or in a nobler cause. A sword, allow me to observe, that cannot even be dignified by the illustrious hand of the distinguished advocate, by whom it is proposed to be wielded. But let not the counsel talk of slaying, until he has, at least, first established his lofty claims to valour, upon the ruins of this wretched, persecuted and oppressed family. Let him first, I say, wage a successful and exterminating war, against helpless women, and unprotected children. "Discretion is the better part of valor." If he will play the falcon, he must not only fly a higher pitch, but make his first experiment upon harmless doves, ere either his beak or his talons will prove subjects of alarm to the towering and majestic eagle. Enough of this—I almost owe Dr. Togno an apology for having breathed a word in his support—he is above all assault—he requires no defense, but clothed in the protection of a spotless and irreproachable character—stands self-dependent and self-sufficient.

"The gentlemen examined for the prosecution do not remember to have seen Dr. Togno at Dr. Mitchell's laboratory."

Wonderful oversight! and therefore, I suppose Dr. Tognò, who swears he was present upon that occasion, partially describes what took place, and particularly mentions the individuals engaged in the experiments—must ascribe all these matters to fancy and not to fact. Can any man doubt his presence—if not, the circumstance of its not being remembered by our other scientific friends may show their own want of memory, but cannot impair the recollections of his. Ah! but says Mr. Reed, he would give us to disbelieve that the stomach was the seat of any inflammation at all, after a very hasty and unsatisfactory examination. I put him in opposition to Dr. Coates—intelligent and respectable as he is, who decided that the internal surface of the stomach was highly inflamed, without ever opening it, upon a very slight examination of the peritoneal coat, and I am content to abide by your decision between them. I put it in opposition to the statement of my friend, Dr. Hopkinson, who was satisfied that the stomach contained the cause of the untimely death of the deceased—without ever having seen its contents, or examined other most important parts of the body. I put it in opposition even to the highly and deservedly lauded testimony of Dr. Mitchell, who, from a skillful and miraculous combination of a variety of uncertainties and fallacies, rendered everything so perfectly evident “that it would glimmer through a blind man’s eye.” I put it, in short, in opposition to everything to be derived from this portion of the case, with the exception, let it be always understood, of Mr. Clemson’s refined and delicate sense of smelling, and his unrivalled—his transcendent powers of discrimination, between arsenic and mercury!

Passing from the chemical, to the anatomical part of the examination, we are by no means relieved from the doubts and difficulties by which the understanding is clouded and embarrassed. Upon visiting the grave yard, what are the circumstances attending upon the exhumation? The body, which was disinterred about three months after its interment, was found, we are told, in a state of perfect and unusual preservation. Unusual—how do we ascertain that?

Not a physician who has been examined has ever seen a body after an interment for three days, much less three months; they have therefore no experience upon the subject in relation to which they speak. This preservation is imputed to the effect of arsenic. Miraculous! Arsenic enough to preserve this body, and yet not enough to be detected subsequently by all the accomplished and skillful chemists employed! It is true, they say, that arsenic is considered an antiseptic, and is thus used in the preparation and preservation of birds after death, but the quantity thus required is very considerable, small as the bodies may be, and can easily be detected. It is no answer, therefore, to the arguments already addressed to you in relation to the failure of the chemical experiments.

Further—the best opinions of the ablest writers inculcate the belief that only that portion of the body which is more immediately affected by the arsenic is liable to be preserved. Yet, in this case, the whole of the human frame was equally preserved. It would be useless to refer to authorities for this principle, as it will hardly be denied.

It is unnecessary, however, to dwell longer upon these theories, when the facts connected with the interment sufficiently explain the phenomenon. The pastor of the church has told you that, having found fault with his sexton for digging his graves too shallow, the sexton afterwards fell into the opposite extreme, and dug them of an extraordinary depth. In addition to this, the soil was of a dry, sandy character, covered with a stratum of clay, which protected it from moisture, which protection was increased by the declivity of the surface of the ground. Now Orfila, in his treatise upon exhumation, and even the scientific witnesses who have testified in this cause, show conclusively that this cause is entirely sufficient to account for that preservation, which, by some, has been attributed to the influence of the poison.

The next ground of reliance on the part of the prosecution is the anatomical investigation. It seems that the body was opened and the stomach removed, under the impression

that the cause of death, in the language of Dr. Hopkinson, whatever it may have been, was contained therein. The lower intestines were found perfectly empty, and appeared "as if they had been hung up to dry."

The rectum was not examined—nor the brain—nor the heart and larger vessels—nor the liver. I will not pause to show you how essential it was, that the examination of all should have taken place in a case of such vital importance. I will not dilate upon the habits, conformation and constitution of the deceased, and the probability or possibility of death from natural causes. I am satisfied to take the examination as it was—to try it by itself—for none but itself can be its parallel. The stomach was removed—it was not opened—and yet Dr. Coates, one of the physicians, from its external appearance, ventured to pronounce upon its internal state. He saw through the covering, the peritoneal and muscular coat, and undertakes to tell us, from this superficial view, not only the character of the inflammation of the mucous membrane, or lining of the stomach, but also to distinguish between congestion and inflammation. I aver this to be utterly impossible, and I regret exceedingly that a highly respectable man, and a meritorious physician should have been betrayed by the excitement of the occasion, into such unnatural perspicacity. I have not the least question of the entire honesty of the doctor's intention; I can have none—but he must pardon me when I say his opportunities of observation were entirely too limited to be depended upon.

While on this subject, what says Orfila? "The existence or non-existence of *cadavaraque* lesions—the extent and seat of disease, are never sufficient to enable us to pronounce whether there has or has not been poison; and they can only serve to corroborate the conclusions derived from a chemical analysis of the suspected matter.^b

Nor is the testimony of Dr. Hopkinson a more legitimate source of reliance, skilful and accomplished as he is ac-

^b Orfila (last edition), Tome i, 379.

knowledge to be, in the science which he professes. He ingenuously concedes the fact that his anatomical inquiries were very imperfect; that it was the first occasion of this nature in which he had been employed; and that supposing that the stomach contained the deleterious or poisonous substance, he considered it to be useless to proceed any further. I wish it to be understood, once for all, that I find no fault with these gentlemen, but I protest altogether against the attempt to infer poison from what did not appear, when they had it in their power by sufficient care and attention, to have decided the question one way or another; and having omitted to do so, we are entitled to argue that a further examination, would have removed, rather than confirmed, their previous suspicions.

In regard to the herring or fishy smell issuing from the body when opened, it is hardly necessary to say anything. Without attempting to be witty, it affords at best but a scaly reason for a conviction. Its only recommendation to attention is that the doctor never smelt anything like it before. I presume he must before have opened stomachs containing arsenic; and if so, not having met with a similar smell, confirms the idea that this was not arsenic. But if the fact were otherwise, his never having encountered a similar effluvia, assuredly does not show that this smell was peculiar to arsenic. There is no book that confirms or suggests that idea. He never before opened a body after three months interment, and in like circumstances, and the similarity of facts failing, the reason also fails. Dr. Mitchell, it is true, having introduced arsenic into a dead stomach, after some months detected a similar odor. Yet we know nothing of the state of that stomach, of the nature of the disease which produced death, of its *cadavaraque* appearances; and therefore it affords us no scope for analogical inquiry. But an answer to all this is derived from Dr. Coates, who tells us that the smell did not seem to him to resemble that of herring, but rather that of tanner's oil. Now I leave you to decide between the noses of these doctors, while I proceed to consider the other portions of this case.

Inverting the natural course of things and pursuing that adopted by our antagonists, from a desire of grappling with them on their own ground, we come next to the chamber of disease and death; and let us approach it with a gravity that becomes the scene. On the night of the 17th of June the deceased was first attacked. He continued ill until the morning of the 23rd, at about 2 o'clock, when he expired. During his illness, he made violent attempts at vomiting, which but partially succeeded. He complained of burning pains in his stomach. Towards the close of his career, he became delirious, and in his last hours his pulse was feeble and fluttering; his mouth was dry, and his skin clammy and collapsed. After his death, a small quantity of what was called bloody serum by Dr. Phillips, was found on the sheets, and supposed to have been involuntarily discharged per anum. Some time after his death, say three or four hours, an unusual rigidity of the body was observed by Mr. Boucher, who, upon that occasion, performed the last sad office of an undertaker. These are the dark denotements, which, together with the other circumstances, must supply the evidence of poison. By whom administered, is another question. If there were no poison, there was no poisoning, which goes to the whole charge.

Dr. Mitchell, for whom as a physician, a friend and a man, I have the highest regard, informs us that the chemical tests were equivocal; that the anatomical examinations were imperfect, and not to be relied upon; that the preservation of the body was fallacious; that the symptoms themselves were not peculiar; but, nevertheless, that from the combination of all, he had arrived at the conclusion "that William Chapman died from poison." This is a home-thrust, and we must parry it or die. I deny, then, in the outset, that by the combination of all those things, each in itself imperfect, perfect proof can be arrived at. I deny that a chaplet of fallibilities, however artfully strung together, can form an infallibility. On the contrary, the concatenation renders imperfection less perfect, and fallibility more fallible. "The mind," says Lord Bacon, "has this property, that it readily supposes a greater order and conformity in things than it finds. Although many

things in nature are singular and extremely dissimilar, yet the mind is still imagining parallel correspondences, and relations betwixt them, which have no actual existence.^c

But, without being an admirer, much less a disciple of the Bobadil school, let me encounter some of these theories in detail. The symptom, for instance—the nucleus of the whole hypothesis. They are symptoms that belong to the cholera morbus, to violent indigestion, some of them to dysentery; none of them peculiarly to poison. But, says the learned counsel, as any and all of them may be found in arsenical cases, you have therefore the right to presume, from their existence here, that this was a case of death by arsenic. Not so, my learned friend: if they are also to be found in natural diseases, you are bound to presume, influenced by the benign principles of the law, that they were the effects of natural causes. Show us, says the counsel, triumphantly, any one of these symptoms which is not to be found in cases of poison. I fearlessly answer, we cannot; for the phases of arsenic are as various as the constitutions and tempers of men. They put on the semblance of every disease, and chameleon-like, change while you describe them. But let them show us, if they can, any symptom not to be found in other cases of disease, and they will have established an important point in the detection of arsenical poison. Nay, more—not relying merely upon their inability to do this, I will satisfy you, that the main and characteristic indications or symptoms of arsenic, even according to Dr. Mitchell himself, are wanting in this case.

Dr. Mitchell have given us some of the grounds, from which he deduces the notion of poison. The involuntary discharge of bloody serum; the absence of delirium; the rigidity of the corpse; and last, but greatest, the diseased rectum. When, wonderful to relate, there is no certainty of any involuntary emission; and there is a difference between Mr. Boucher and Mr. Phillips, as to the bloody discharge. And even had it taken place, there are various complaints which would produce it. As to the absence of delirium, not a witness has

^c *Novum Organum*, sec. 2, aphor. 45.

mentioned it; but Dr. Knight and Dr. Phillips both state that he was delirious from time to time, for twenty-four hours before his death. If, therefore, absence of delirium be an indication of arsenic, the presence of delirium is evidence against it. The rigidity of the limbs is easily accounted for, the body having been permitted to remain several hours in the bleak air of the morning, before any attempts at laying it out were made, even admitting that rigidity. But it is still less to be regarded, when it is understood that Mr. Boutcher, so far from being, as the doctor supposed, an experienced undertaker, was but a neighboring individual, accidentally performing these rites; who, perhaps, had never seen a dozen dead bodies in his life, and who tells you himself that although he had sometimes done these things, he had ceased to do them for several years before. He perhaps had never performed the service in similar circumstances, and his vague impressions in respect to the stiffness of the limbs are too flimsy and indefinite to be entitled to much respect.

As I have said, the last and greatest argument for poison is the diseased rectum. This is establishing a disputed fact, from an inference, when the fact might itself have been ascertained, instead of drawing an inference from facts. Nay, more—and worse than that: an inference of poison is derived from an inference of a diseased rectum. Not a witness has proved it. Not a witness who was present, has mentioned it. No complaint was ever uttered by the deceased about it, though the circumstances attending his illness, as particularly described by Dr. Knight, were obviously such as to induce complaint, had this imaginary cause actually existed. So that you perceive the process by which these learned Thebans arrive at the conclusion of poison, is by first stating the general symptoms of poison; and secondly, imagining correspondent symptoms in the deceased, some of which never appeared; and the very opposites of others, having been abundantly established. A single remark and I bid farewell—a long farewell to physic. I have been surprised and astonished at the silly sequel to that story, whose preface prom-

ised so much wisdom; and I think I utter your sentiments when I say that, however skillful our scientific friends may be in preserving life—and I know no men in whom I would more readily confide—with such evidence as this, they are utterly incapable of destroying it. I respect them all—I honor them all; and to Dr. Mitchell particularly, I have confided, and would still confide, the health of those much dearer to me than myself. But experience has taught me this salutary lesson of human nature that, whatever may be the gradations in refinement, whatever may be the immeasurable differences in intellect, whatever may be the advantages of science, still, in the essential constituents of the human character, men are at last but men; alike subject to passion, to prejudice, to error; and perhaps more strongly confirmed and sustained in all, by that very refinement of reason, and expansion of thought, for which, in general, they are so justly celebrated and admired.

Pursuing the course marked out by our learned friends, though by no means that which I had proposed myself to adopt, I now pass from the pathological, anatomical, and chemical inquiries, to what is termed by them, the circumstantial proofs in this case. Circumstantial evidence it should rather be called, as the term proof implies a higher claim to regard than belongs to this species of testimony, even in its best estate. I will consider it in the order, perhaps I should say disorder, in which it has been presented.

As to Mary Ann Palethorpe, the little girl of 12 years of age, who served as a modest and ingenuous pioneer, for the introduction of bolder and more reckless spirits, scarcely anything need be said. She is a child—an artless and an interesting child—and far, far be it from me, to impugn or impeach her in the slightest particular. I believe what she has said to be as sacred as though an angel spoke. But were it otherwise, my flight is winged above the heads of children, whatever may be their imperfections or inconsistencies, and has for its object and its prey, those who **are** no longer protected from impunity, by the maturity of **their** crimes.

First, in the first rank of those stands the redoubtable Ellen Shaw—*dux famina facti*—an Amazonian Queen—a modern Penthesilea; sustained on the right by the peerless Fanning, on the left by the blushless Bantom, and leading on a host of other worthies, in this charitable crusade against a woman—a mother—and a benefactor. It has been the melancholy fate of the defendant to nurse vipers in her bosom; to warm them into life, and to be the victim of their venom. Her very charities are converted into implements of assault. The abandoned profligate, Mina, the great exemplar of this wretched crew, after having been discarded with revilings and reproaches from every other asylum, presents himself at the door of the defendant about the middle of May, in the evening, a beggar and an outcast. He solicits alms—he craves a night's lodging. Under the twofold influence of pity and that duty which is enjoined by divine authority, her house and her heart are opened to him, and she contemplates with the anxious and the melting eye of a mother, the friendless condition of her own children, in beholding that of the wanderer. In the language of divine inspiration, as impressively quoted by my colleague, "he was an hungered, and she gave him meat; he was thirsty, and she gave him drink; he was a stranger, and she took him in; naked, and she clothed him; sick, and she ministered unto him."

But returning from this episode, to the testimony of Ellen Shaw, we find a blister on the very forehead—an odious blot on the very title page of her evidence. She informs you that she was in the yard when Mina first arrived; that "the dogs barked at him as he passed by them;" that he knocked at the kitchen door, and she told him that he had better apply at the hall door, which he accordingly did. That Mr. and Mrs. Chapman came out, and that the former observed to him in answer to his inquiries, that there was a tavern a short distance below; that Mina replied he had already been refused assistance at that tavern, and that Mrs. Chapman then took him into the room, and began to talk to him, and that the door being shut, the witness went into the kitchen. Now, one-half of this story is the very coinage of her brain, for

Mary Palethorpe, another witness for the prosecution, distinctly says—without speaking of the testimony of the little Lucretia, who is worth a host of Ellen Shaws—that Mr. and Mrs. Chapman were tranquilly sitting in the parlor; that Mr. Foreman went to the door; that he returned, and told Mr. Chapman there was a stranger at the door; that Mr. Chapman requested Mr. Foreman to show him in; that he was then introduced into the parlor, and there the conversation just referred to took place.

Thus, you perceive, Ellen Shaw not only states the fact of Mr. and Mrs. Chapman's presence at the door, which was not true, but relates a conversation as having taken place at the door, which actually took place in the parlor, and with closed doors, while she, Ellen, was in the kitchen. To place the mildest interpretation upon this story, it is either imaginary, or she has totally confounded that which she knew, with that which she derived from other and illegitimate sources. The inconsistency, however, does not rest here. She states to you, that Mina, upon his arrival, had on a dark, or black suit of clothes, and a long coat; while Mary Palethorpe says he wore a light roundabout. This, though I admit it is unimportant in some of its relations, still shows how little dependence is to be placed upon the accuracy of the witnesses.

But Ellen proceeds yet further, and says, preserving the same spirit which she manifested in the outset, that Mrs. Chapman, a day or two after his arrival, accompanied Mina to Count Bonaparte's: they went in the carriage in the morning, and returned in the evening. She omits altogether to mention, that Mr. Ash was their companion in the journey, and that it was with the entire approbation of Mr. Chapman. That this was an intentional omission, can hardly be denied, when we remember how remarkably tenacious her memory appears to be, in regard to the minutest circumstance that is calculated to operate in favor of the prosecution:

It was during this ride, says the learned counsel, illicit love lighted up his unholy fires in the bosom of the defend-

ant. How delightfully—or frightfully romantic! The first attempt, evidently, was on the part of the prosecution, to show the acquaintance between the prisoners, anterior to the arrival of Mina at Andalusia; and therefore was it that Mary Palethorp was asked, “who appeared best to understand him when he arrived?”—to which she answered, Mrs. Chapman. But being driven from this position by their own witnesses, the next effort is, as I have shown you, to infer a criminal alliance between them, from the period of visiting Bonaparte’s, which was but two days after the reception of Mina, at Mrs. Chapman’s hospitable abode. This is a fancy, unrivalled in all the legendary lore of outrageous fiction. The Libertines, the Monk, the Black Forest, the Mysteries of Udolpho, and all the other mysteries that the world ever heard of, saw, or wondered at, never presented to the human mind so shocking a monstrosity as this. A beggar—a cut-purse of the empire; a vagabond, who in personal appearance was not the twentieth part the tithe of her precedent lord; a wretched tatterdemalion, fit only for a scarecrow, wins at first sight the defendant from her loyalty—from her husband, with whom she had lived in harmony for thirteen years—from her children, upon whom she doted—nay, even from herself! Where, except in the prolific fancy of the ingenious counsel, do you derive support for this notion? Even Ellen Shaw tells you, that upon her return she spoke of him as a son—as a brother to her children, and I ask you whether it is possible for illicit love to mingle his lurid fires with the hallowed flame of maternal tenderness and affection?

The next part of Ellen Shaw’s testimony is that which relates to the conversation between her and Mr. Chapman, during the absence of Mrs. Chapman with Mina, at the city of Philadelphia, for two or three days. Now, whether any such conversation took place with her is exceedingly doubtful, as Fanning says she was not present; but take it as it is. This female Iago tells you that upon the husband’s complaining of his wife’s absence, she hinted to him that it was probable they had gone to Mexico, as she had heard them speak of such intention. Yet she never heard them, and admits

she never heard them, and thereby she convicts herself in the first place, of falsehood; and secondly, she shows, from what cause we need not stop to inquire, that her feelings towards Mrs. Chapman were of the most hostile and malignant character.

Without pausing to notice her various anachronisms—the allegations of her desire—and that of her children, that she should leave the place—her confounding spiritual and temporal songs together—her pious ejaculation on the subject of family prayer—her abominable perversion of the true state of facts in respect to Mr. Chapman's having been compelled, by his wife, to make the beds—all of which matters have been brushed away from me, by the friendly hand of my colleague—I say, without making these separate subjects of remark, let me merely ask, while thus glancing at them in rapid review, whether there is a man on that jury who would be satisfied to abide by that test, which worthless, discontented, and discarded servants, might be disposed to apply to the least questionable, to the most laudable of all his domestic arrangements. The language—the manner—the matter—when tortured in her intellectual or moral crucible, lose all their value—their gold is turned to dross.

Again, in speaking of her visit to Mr. Wright's a visit made for her own personal gratification, a few days before she left the house at Andalusia, she mentions that Mina, pretending to be sick, threw himself back upon the lap of Mrs. Chapman, who supported him in her arms; and yet she omits to mention altogether, that Mina also rested in her lap, though it was obvious to all that she was a perfect antidote to the tender passions. Nay—this is not all: upon arriving at Mr. Wright's, she informs you that Mina and Mrs. C. took a walk in the woods, forgetting altogether the fact extracted from her upon the cross examination, that they also invited her to walk, and that the house of Mr. Wright, upon their arrival, was in such a state as to be unfit to receive them, and that therefore they were compelled to walk, as they had no opportunity of sitting. If you choose to be suspicious, why, to be sure, you may perceive impropriety in this, as you may

in an other step in life; but, it itself, it is entirely harmless, and totally consistent with the most immaculate virtue.

The malevolence of this witness towards the prisoner was clearly to be inferred, from her promptness in answering, whenever her answer was unfavorable to the defendant; and from her mental reservation—her suppression of the truth, in those particulars which were calculated to explain what otherwise might exhibit a semblance of guilt. But we are not left to mere inference of malevolence. You have it in distinct proof—in proof from Ellen Shaw herself, who, if she can establish anything, it must be her own unworthiness. When injudiciously called a second time by the prosecution, we took the liberty of applying the touch-stone “to see if she were current coin or not.” She was asked whether she had had no difference with Mr. and Mrs C; she answers, none. But were you not dismissed from their service? “Well,” said she in reply, “didn’t I go?—and they got an old drunken wretch from the road in my place, but she did not stay long.” Can you have any doubt, gentlemen, after this, that her malice, thus engendered, has for the last twelvemonth been confined like subterranean fire within her bosom, at last thus to burst forth and spread a ruin around. She presents before you the shocking anomaly of a human volcano, breathing nothing but flames, devastation and death.

Let us turn from this disgusting picture, to the next witness presented on the part of the prosecution: Mrs. Esther Bache. Her testimony is of but little importance. She relates what took place between Mina and Mr. C., and says that Mr. C. having attempted joking with him, he gave Chapman a very ill look. It is somewhat hard to find fault with this, as he certainly had no other look to give. But, says the witness, Mrs. C. apologized, and laughingly said, “Mina does does understand a word Mr. Chapman utters.” This, to be sure, was wonderful, and bears its own comment with it. I only ask Mrs. Bache what she would have done, and wherein consisted the supposed impropriety?

But the witness says that Mina sat on the right hand of Mrs. Chapman at table. Where should he sit—at the head

—at the foot? If he had taken either of those places, it would have been downright treason! Which side Mrs. Bache sat, we have not learned, but, considering she never sat down but twice at the table with Mina, and never was in the house with Mrs. Chapman beyond a day, and that in the capacity of a seamstress, her observations, critical and explanatory, of the domestic regulations of the family, were truly remarkable and surprising. Mrs. Bache has every appearance of a respectable woman, and no doubt is so; but she is one of those ladies with whom Ellen Shaw and Ann Bantom have been talking, and what, independently of their communications, she would have considered as every-day trifles, when connected with, or engrafted upon their stock of knowledge, produces to her mind a ripe harvest of forbidden fruit,

“Whose mortal taste brought death unto the world,
And all our woe.”

Ann Bantom, who modestly takes the third place in this melancholy procession, but who has strong claims to be first, will now be introduced to your notice. She, I suppose, has been brought forward to give some color to their case. Thus it is, gentlemen of the jury, black spirits and white are conjured and raked up, from the vile recesses of the kitchen and the garret—and arrayed here before you upon this trial, like Milton’s devils—“ferce as ten furies, terrible as hell.” The day darkens at their approach, and the radiant smile that beams from the brow of innocence fades away, beneath their withering and demoniac charm.

Ann Bantom is the pivot upon which the whole case, exclusive of the medical branches of it, must rest. The second proposed general inquiry relies entirely upon her for its solution, at the same time that her testimony materially affects the first. Thus important, I fearlessly plant the standard of my defense upon their own soil. I am content to encounter them with their own arms, and submit uncomplainingly to the issue of the conflict. A word or two, for the general recommendation of Ann Bantom to our regard. She was employed as an out-door servant; occasionally, though

not often, had attended on Mondays to assist in washing, and without, for aught that appears, any other connection with the family. Having generally been there on Mondays, how she at this late period, identifies the precise day upon which the events which she relates took place, I know not, and I care not; but I will consider them as they have been communicated; and for that purpose, I am sure you will accord me a patient and attentive hearing.

Ann Bantom says she was at Andalusia the Monday after Mr. C. was taken sick; and it is not a little remarkable, having no kind of acquaintance with Mr. Chapman, that she should have gone uninvited into his chamber in the morning, to inquire after his health, to find him better, and that she should again go up in the afternoon of the same day, to make similar inquiries, and to find him worse. I pronounce this remarkable in itself, but it is rendered still more so by the recollection that it does not appear she had ever spoken to him before, and that on the next day after the Monday referred to, she neglected altogether paying him a visit, though she knew he was worse; and at last was urged up into his chamber by his wife, for the purpose of being convinced how important it was, in the helpless state of the family, that her services should not be withdrawn. This may be all true, but much of it is extraordinary. Those two visits on the morning and afternoon of Monday bear strange denotements. The prosecution required that somebody should see him in the morning, to observe that he was better, and then see him in the afternoon, to find that he was worse; while in the interim the soup is to be given to the patient, and the deduction of poison is complete. All these matters are derived from the witness whose testimony we are now considering. Let us turn particularly to her statement.

"Mrs. Chapman," says the witness, "boiled the chicken and prepared the soup." That the hand of the wife should minister to the wants of the husband in the hour of disease is assuredly no subject of legitimate complaint—yet such is the dilemma of Mrs. Chapman, if she gave her husband nothing she is branded with unparalleled cruelty, and if, on the

contrary, she comply with the express directions of the physician, and prepare his food or diet, it is only for the purpose of infusing poison into it. Had she for a moment contemplated so horrible a deed, might not the soup have been as well prepared by any other hand? The introduction of the arsenic was the work of an instant, and it is alleged to have taken place some time after the soup was made. There was everything to deter her, if actuated by the imputed purpose, from unnecessarily connecting herself with a transaction, from which such direful results were to spring. It was not usual, we are told, however, for Mrs. C. to attend to culinary concerns. It may not have been, but this renders our reasoning the stronger, even as applied to this condition of facts.

One small circumstance, however, has escaped the memory of our friends, and it almost escaped that of their witness; which is, that on this very Monday, Juliana, the cook, had been taken sick, and Ann Bantom being engaged out of doors, nobody remained to attend to the preparation of the soup but Mrs. Chapman. Yet still, perfectly as this portion of the case is explained, if you choose, as the counsel do, to take it for granted she is guilty, even this circumstance makes against her. But, if you are to decide upon the testimony, I will not say it is irreconcilable with guilt, but I do say, it is perfectly reconcilable and consistent with entire innocence.

To resume the course of the evidence: The soup having been made about dinner time, after putting salt in it, it was taken up by Mrs. Chapman into the parlor, for the purpose of seasoning. I cannot understand this exactly, and perhaps it is not necessary that I should. Ann Bantom follows Mrs. C. into the parlor, where she finds Mina. She does not remember what she went up for, but having fulfilled her purpose, she returns again into the kitchen. In the afternoon of the day, the soup, or what remained of it, was brought down by Mrs. C. and placed upon the kitchen table, and the chicken was subsequently taken up, and afterwards brought down almost entire, if not quite, and also placed upon the same table, where they were both permitted to remain, until thrown out untouched, by this faithful and eco-

nomical servant. After this, the ducks of Mr. Boucher, to the number of twenty, died; and the argument was intended to be—nay, was—that the poisoned soup produced their untimely end. Now, let me consider this, and if I do not totally demolish the reliance of the prosecution, upon their own testimony, I will never open my lips again in a court of justice, but ever hereafter, shroud my diminished head in obscurity and oblivion. This soup, say they, was poisoned soup; how can you for a moment reconcile with that idea, or rather with the idea of Mrs. C.'s knowledge of the poison, the resistless fact of the poisoned chalice having been permitted to remain for nearly a half day, upon the table in the kitchen, in the very center of her children, who were there at play, and subject also to the appetites of her servants? Do you—can you suppose, that she designed the destruction of her entire household, little ones and all? Nay—do you suppose that she designed directly to contribute to her own inevitable detection? Both sympathy and selfishness alike revolt at the idea. If poison had been infused into the soup without her knowledge, she is free from crime; and if it existed at all, it is only by supposing it to be without her knowledge, that you can account for these extraordinary measures. For all the uses of this argument, I care not whether Lino purchased two ounces of arsenic, or two pounds, a day or two preceding Mr. C.'s death. It may make against himself, but not against the present defendant; for, whether the deceased died from natural causes, or from his hand, is alike to our defense, the prisoner being unacquainted with the cause, and that she was a stranger to the cause, if contained in the suspected soup, is perfectly manifest and unquestionable; and if the cause were not contained in the soup, then was the soup made and salted—the chickens died, and the ducks followed—all to no possible purpose, and we have been entertained here for a half a day in the examination of kitchen concerns, to be told in conclusion, that they have nothing to do with the case. Had she borne with her the consciousness of guilt, what was to prevent her disposing of the soup in a thousand ways—throwing it into the fire, throwing it out

of the window, emptying it herself into the sewer, where no human power could have discovered it? Nothing. Yet, say the gentlemen, perceiving the force of this argument, "but a portion of the soup that was taken into the parlor was poisoned, and afterwards carried up to Mr. Chapman; and that which was brought down into the kitchen had not been drugged." This is ingenious; but it has no evidence to stand upon, and is self-destroyed. The only soup thrown out was the soup brought down. The soup that was thrown out is that to which the death of the ducks has been attributed; and if that did not contain poison, how was the death of the unfortunate ducks produced? They talk of challenges! I challenge them to reconcile these conflicting hypotheses.

Mr. Hellings and several other witnesses state that the death of large flocks of young ducks is not unusual. That fish water, lime water, and various other matters, will produce that result; and it deserves to be remembered that Mr. Chapman having been recently engaged in building, large quantities of lime were scattered over his little domain, and perhaps that circumstance may reasonably account for the timeless fate of these almost unfledged trespassers.

A word or two more, ere I take leave of the ducks. I am not fond of quackery, which must account to you for a very brief obituary notice of these long lamented quacks. On Monday morning, before the soup was made, three of Mr. Boucher's chickens rolled on their backs and died. On Tuesday afternoon, a whole day after the soup had been thrown into the aqueduct, the unsuspecting ducklings followed their example; so that you perceive, the chickens died by anticipation and the ducks, forsooth, by retrospection. They were all decently buried, no doubt, with becoming ceremonies; yet we cannot but drop a passing tear of pity for their fate, when we are told that their rights of sepulture have but yesterday been barbarously invaded, and their canonized bones have burst their garments, and been produced as a sort of *memento mori* in this open court, for the purpose of corrupting the wholesome and heavenly atmosphere of justice. I can wish the prosecution, however, no worse fate, and they deserve

no better, in requital of this unhallowed deed, than to be daily haunted at the festive and convivial board, with the awful apparition of a brace of fat ducks. So shall they ever remember the history of this day's error, and be taught a solemn and salutary lesson of becoming reverence for the departed.

We have thus far contemplated the evidence of Ann Bantom in itself, and found it altogether too weak to sustain itself. What, then, shall become of it, when opposed to the resistless current from other quarters, that sets against, and overwhelms it. The little Lucretia, with a purity unsurpassed by the great original of that name, and with a beauty and simplicity that won all eyes and hearts, informs you that the soup in question was brought to her by her sister Mary, while she was attending at the bedside of her sick father, and that she gave it to him; that the chicken was brought up at the same time; that he drank some of the soup, but ate heartily of the chicken; and not having had her dinner, at his request she joined him in both, and afterwards carried the little that remained into the kitchen, and placed it upon the table. What now becomes of the statement of Ann Bantom, that Mrs. C. brought down the chicken and the soup? What now becomes of the notion of the learned counsel, that the portion of the soup that was given to Mr. Chapman was poisoned, and that that which was returned into the kitchen was not the same? There can be no mistake in the time—it was on Monday, while the father was sick, and Ann Bantom in the kitchen. There can be no mistake in the circumstance—it was the only soup administered. There is no refuge left, therefore, to the prosecution, but to ground their arms, and march off at once, without flourish or trumpet or beat of drum.

I come now, in almost the last place, to an analysis of Fanning. This eastern mountebank—this peddling book-seller—a fellow vending his salt-and-water physie, and his milk-and-water literature through the land; one of a wandering tribe, as numerous as the locusts of Egypt, and as great a curse. He arrives at Andalusia, a beggar, with an empty

head, an empty heart, an empty stomach, and an empty subscription list; and with the same generosity as was displayed in the reception of Lino, she charitably supplies all his wants. Her house is open to him, her table is spread for him. His list of subscribers enlarges daily, even beyond his hopes, under her fostering care, and in kind requital for all this, when by the death of her husband she was left without a protector or a friend, in a strange land, this viper, who had so long coiled in flow'ry ambush, deliberately attempts stinging her joys to death. He causes it to be rumored through the neighborhood that he is the sacred depository of some dark and darkling mystery. He leaves word with Captain McIlroy that there were deadly doings in that house, and having left his address, desires to be sent for, if anything of importance should transpire. If he knew anything that his conscience forbade him to conceal, why did he not speak out like a man—why shroud himself in the dunnest mystery? If he knew nothing—and it appears he really did know nothing—why did he thus contribute to give wings to wild conjecture and unjust suspicion, against one who never harmed him? For the latter part of his cunning I could suggest a cause: Being about to depart for some remote part of the United States, and always having a crafty eye to business, he dexterously maneuvers to be conveniently recalled, and throw the expenses of his journey upon the broad shoulders of the Commonwealth.

And now we have him here, was there ever a more ridiculous farce than that which he exhibits? He opens his peddler pack before this court and jury, and while every man stands aghast, with the idea that, like Pandora's box, it will pour forth all kinds of evils to afflict the human race, lo, and behold, it presents an empty void! From the moment of this disclosure the flood of prejudice began to ebb; the thronged avenues to your court were literally deserted, and the rapacious hounds that pursued the defendant, even here to her last refuge, with Blaney at their head, all lost the scent of blood, and sneakingly, though reluctantly, relinquished their prey.

Little, however, as is derived from Fanning, it may not be time unemployed—as he is the Magnus Apollo of the case—to take a bird's eye sketch of his testimony. He first introduces himself, by referring to that period of time when Mrs. Chapman, her son William, Mina, and Mr. Ash, visited the city, and remained absent about three days. On the night of the second day, he says, Mr. Chapman was much agitated, and displayed a great deal of passion, declaring that he had had no peace since Mina came into his house, and swearing by the Deity that he would shoot him. After all this storm of rage, however, according to his account, Mr. Chapman quietly and tranquilly retires to his repose, leaving the witness, as a sort of Hesperian Dragon, to guard his honor during the soothing hours of slumber. What a mass of inconsistencies have we here. A husband, publishing to a comparative stranger, the story of his wife's dishonor—raving this moment in all the torments of the damned, and the next, silently seeking the repose of his thorny pillow—the consolations of his violated bed. But the climax of this absurdity is the appointment of Fanning to stand watch and ward, and like night's sentinel silence, to challenge every sound. This situation, however, was not active enough for the curious and prying disposition of Fanning, and he therefore soon followed the example of his commander, and slept upon his post.

The next day the plot thickens; the wanderers all return; the death of Mina's sister is communicated; and Mr. Chapman accompanying Mina into the parlor, instead of pronouncing him an impostor, as he had alleged him to be to Fanning—instead of blowing his brains out, as he had awfully threatened the night before—he takes a seat with him on the sofa, embraces him, mingles tear with tear, and as Fanning himself says, in the language of scripture, “mourned with the mourner.” This is not all: Mr. Chapman immediately writes to Messrs. Page and Watkinson, ordering them to prepare a splendid suit of black for his faithful friend, Don Lino, and to charge it to him. Nor does he stop here: even a few days before his sickness, he draws an order, in

his own proper hand, upon Mr. Fassitt, and requests him to pay the balance of his account to his confidential agent, Don Lino. And when you connect with these circumstances the tender epistle written by the deceased to the parents of this Don Lino, or Don Devil, you must inevitably arrive at one of two conclusions, either that Chapman was a madman, or Fanning a liar.

The peddler, having after the scenes above referred to, absented himself for some days, again returns a day or two before the close of his patron's earthly career—namely, on Monday morning, about 9 o'clock. With his characteristic modesty, he makes his way immediately into the sick chamber, where he found the deceased, very ill, and vomiting excessively; this, however, he afterwards partially explains by saying, he made violent attempts at vomiting, but with little effect. The witness saw Mrs. C., who requested him not to communicate the condition of Mr. C.'s health to his brother's family. On the night of the same day he is desired by Mr. Chapman to remain with him—"for," said Mr. C., "I am very sick; when Don Lino is sick, all attention must be paid to him; but now I am sick, I am deserted." Before I turn to other portions of the testimony, allow me to bestow a few remarks upon that to which I have thus adverted. Finding the deceased very ill on Monday morning is, in the teeth of Ann Bantom's testimony, who states he was much better: you must decide between them. The request of Mrs. Chapman that he would conceal the state of her husband's health from his brother's family, unexplained, would operate against us. But we have shown you that there was an unhappy fraternal feud—that Mr. C. had not been permitted to see his brother during that brother's illness, and that in consequence thereof he had, on the very day preceding the peddler's arrival, written to his pastor, and spoken to Mr. Vandegrift, to the effect of excluding his brother's family from all participation in his funeral rites. He knew that his widow would be liable to reproach for this, and therefore it was that he thus publicly exculpated her. As to the complaints made by Chapman to Fanning of the attentions to Don Lino and the desertion of him-

self, uttered no doubt in the way of bitterness, even if Fanning speak gospel, how little are they to be depended upon. We all know the fretfulness, the whims, the caprice, attendant upon disease; we know that shortly after this period, Mr. C. was in a state of delirium—and it would be cruel in the extreme to permit his loose and scattering remarks, which owed all their prosperity to the ear of Fanning, to be visited against his absent and injured wife.

It was said by the opening counsel for the prosecution, no doubt anticipating the support of Fanning's evidence, that Mrs. Chapman drove her husband's attendant from the room in his last hours; that she refused to send for a physician; and that she withheld from him the medicine prescribed. How ungenerous and unjust is such an imputation it will be for you to determine, after having heard the evidence upon which it is built. How did she drive the attendant from him? Her house being a perfect hospital—her cook sick—Mina laboring under his fits, either real or affected—her husband dying—she is even compelled to assail the sympathies of Ann Bantom, by describing her distresses, in order to induce her to remain. Whom did she drive from the room? Not Bishop, for he remained in attendance. If anybody, it must have been Fanning; and how did she expel him? She came into the chamber about 11 o'clock, where, finding Fanning, she expressed her obligations to him, and told him she would not trouble him to remain through the night; and this perfectly simple and usual occurrence is distorted into a glaring circumstance of guilt.

"I requested," says Fanning, "to be allowed to go for a physician, again and again, and was refused by her." What a cowardly concealment of the true state of facts do we here perceive. Dr. Phillips had been sent for on Saturday, visited Mr. C. on Sunday, was the family physician; and upon the cross-examination of Mr. Fanning, it appears that it was not Mrs. C. alone that declined sending for another physician, but that it was also opposed by Mr. C., on the ground that it might offend Dr. Phillips.

In regard to refusing, or omitting to give the deceased the

medicines prescribed, Dr Knight, who attended the patient four or five times, gives you no reason to believe it. I think he gave him some of the medicines himself. The prescription of Dr. Phillips was rigidly pursued, and wonderful to relate, forms part of the charge against us. Even Fanning admits salt and water was promptly administered; and yet, after all, as I have said, the argument is, that when anything is given it contains concealed poison; and if nothing be given, it is an evidence of barbarity.

In conclusion upon these points, I say, the whole course of the defendant's deportment during those painful scenes was attentive, kind and wife-like. Dr. Knight, it is true, thought she was not as much in the room as she might have been; but Dr. Knight knew but little of the helpless condition in which she was placed, and of the various avocations to which she was reluctantly condemned. Dr. Phillips, on the contrary, whose evidence was a model of manliness and propriety, distinctly informs you that the conduct of Mrs. Chapman was becoming and decorous; that as death approached, as they all required rest, he led her and the children out of the room; that he retired also himself, desiring to be called if any change should take place; that he was called about 1 o'clock, and that Mrs. C. and the children surrounded the bed of the dying man at the moment of dissolution. After this all proper and becoming measures were adopted for his interment; matters were managed in the usual way on such melancholy occasions; the relatives and friends of the departed were invited; the curtain fell, and the last scene of this sad drama forever closed.

The *post-mortem* events, so far as they have not been already examined, remain to be briefly reviewed. Your patience and my strength are nearly exhausted, and I therefore hasten to the termination of our mutual toil.

The marriage with Lino, within a fortnight after her husband's decease is considered as a damning spot upon the escutcheon of this case. If the doctrine be true, that "none wed the second, but who kill the first," we are indeed driven to despair, for the second marriage is unquestionable. But

I deny the doctrine; and although I admit that there was nothing to justify this unholy haste, there was, I allege, much to excuse it. The defendant was left with a large family, with limited and precarious means, and without a single friend upon whom to rely in the hour of adversity and distress. Up to this period of time, at least, she had every reason to believe in the representations of the destroyer. His story was sustained by the information derived from the steward of Count Surveilliers; it was further corroborated by his reception at the abode and at the table of the Mexican Consul; by the grateful expressions of Miss Romana Cuesta in behalf of a distinguished though unhappy Mexican; by the munificence of the stranger as exhibited by his will, the promise to allow six thousand dollars for his instruction in the English language, the allegation of his immense wealth, and that of his family. But above all, was it confirmed by the confidence manifestly reposed in him by her husband, as is clearly established by irrefragable documents, notwithstanding all that has been said or surmised by some of the witnesses in this case. Connecting with all these circumstances the declaration made to her by Mina, that it was the dying request of his friend that he would prove a protector to his widow and a father to his orphans; his further declaration of his intention almost forthwith to return to Mexico; of the impossibility of their traveling except as husband and wife; of the customs of his own country in regard to disparity of age; of the importance of being so united, that his father, a proud Spaniard, should not be able to dissolve the bonds, or deny to her the advantages of survivorship, in case of his death; of the gratitude which he felt towards one who had sheltered him in poverty and nursed him in disease; of his intention to bestow the place at Andalusia upon those relatives who were most dear to her—take, I say, all these combined influences into consideration, and then decide, if you can, that she was not infinitely more sinned against than sinning.

It is perfectly true that, hearing as you have done, all these falsehoods exposed, it may excite some surprise that

they were not earlier detected. But we are to determine upon her conduct with reference to what was actually represented and believed, and not with regard to what subsequently took place. It is the privilege of but one Eye, as has been said, to dive into futurity, and to lay open the dark recesses of the heart; she was human, and therefore fallible; but there is a vast difference, in the contemplation of this court, and of a higher court, between human error and human crime.

The marriage ceremony having been performed at New York, on the fifth day of July, 1831, Mina returned to Andalusia, and the defendant, in pursuance of the previous arrangement, proceeded to Syracuse on a visit to her sister, Mrs. Green, the object of which was to place that sister in the possession of her establishment in this country, while she and her children accompanied her husband in the projected voyage to Mexico.

Several letters were written by her during her absence, which have been subjects of severe commentary on the part of the prosecution, and which are said to contain nothing but an expression of the wildest and most irregular passions. It is not very easy to say exactly what should be the character of a letter from a wife to a husband; it must depend very much upon circumstances—upon the age, constitution, temperament, and condition of the parties. I have read those letters, private and confidential as they were, and you will have an opportunity of reading them; and I take leave to say, that they exhibit nothing that is incompatible with the most entire purity of the heart, or with a judicious exercise of the faculties of the head. They were not intended for public exposure, and therefore, to us, who cannot enter precisely into the feelings of the parties, they may appear somewhat unreasonable and extravagant. But test them, if you please, by letters which you have either written or received in a similar relation, and you will at once perceive that they are neither extraordinary nor remarkable. It is the privilege of married life to speak and to write unreservedly; and your own experience will be sufficient to satisfy you, that in

this instance that privilege has not been carried by the defendant, to a licentious or culpable extreme.

There is one letter, however, written by the defendant to Mina, while at Washington, which is said to contain at least an equivocal passage, and to afford ground for the belief, in the language of the opposite counsel, "that all was not perfectly right." In passing to the consideration of that clause, we must be allowed to premise, that it is not sufficient, that all was not perfectly right; it is incumbent upon the prosecution to show to your satisfaction that all was perfectly wrong. I agree that all was not perfectly right. It was not right that she should marry within a little month after her husband's decease. It was not right that Mina should sell her jewels, her plate, her horses and her carriage, or that he should give away the trunk and books of her deceased husband. It was not right that he should take two ladies to the United States Hotel, and that, remaining there with them, he should pay their expenses and his own out of his wife's honest earnings. It was not right that he should squander her means in the journey to Baltimore, under the false profession that it was for the purpose of obtaining a legacy of forty-five thousand dollars, left by his friend Casanova; and it was manifestly wrong that he should practice all sorts of frauds and falsehoods upon this unsuspecting woman during his absence. I agree, therefore, as I have said, that all was not right; but I deny that writing under the influences fairly attributable to these manifold outrages, this clause referred to in her letter, is to be considered as an evidence of her having aided in the destruction of the deceased.

It is a well settled principle in criminal jurisprudence, and it cannot be too strongly borne in mind, that where the acts or language of men admit equally of opposite interpretations, that construction shall be adopted which is most favorable to innocence. With the benefit of these impressions, let us turn to the objectionable paragraphs. I quote it from memory, and shall willingly submit to correction, if I quote it erroneously. "When I reflect, Mina, I am constrained to acknowledge, I cannot believe

that God will suffer either you or me ever to be happy on this side of the grave." Was not reflection upon the events just referred to entirely sufficient to induce these expressions, without imagining the perpetration of an offense so heinous as that charged against the prisoner? She had been imprudent; she had been imposed upon; she had been impoverished, together with her children, to whom she was tenderly attached. And if this were not a state of circumstances calculated to produce such a reflection, I am utterly at a loss to conceive what would be. On this side of the grave indicates worldly suffering for worldly indiscretion. If she had been guilty of the imputed crime, her fears would not have fallen short of that punishment which awaits the wicked beyond the grave.

Taking these letters all together, and carefully perusing them, nothing can be found inconsistent with the consciousness of innocence. Can you suppose, if this woman had committed so odious and hateful a crime as that imputed, writing as she did, under the sanctity of a seal, and to her partner in iniquity, she never would have allowed a single word to escape her in which the lynx eye of the prosecution could perceive a semblance of guilty remorse or timidity. If we are determined to suspect crime first, and then to distort and pervert everything to the support of that suspicion, no man, innocent or otherwise, can escape punishment. I defy the counsel, with all their learning, skill and accuracy, to write a letter upon any subject, in which I cannot detect, being suspiciously disposed, either an intention to conceal some motive that they entertain, or a disposition to convey some idea that they do not. If their composition be loose, it will be indefinite and equivocal, and admit of a vast variety of constructions. If it be terse and precise, we may plausibly infer, from that very terseness and precision, that they are anxious to guard themselves against the disclosure of some lurking motive.

In reference to the letter written from Erie to Colonel Cuesta, I have but a remark or two to make, carrying with me the benefit of those observations upon the previous cor-

respondence. That letter, be it remembered, was written several months after her departure from Andalusia. It contains this passage: "When I reflect that it is possible that my dear husband died of poison, and that I myself am suspected of being an accomplice, I am shocked, I am paralyzed." Now, says the opposite counsel, "why should she dream of being suspected?" I answer, for the most obvious reason; because the public journals throughout the United States, to which she undoubtedly had reference, uttered nothing but the most malevolent and unfounded reports of her participation in this crime. She must have closed her eyes, her ears, and her understanding, against every passing wind, if she had not discovered, long ere the date of that letter, the weight of obloquy and suspicion that was heaped upon, and crushed her.

In the same letter she mentions, among various other matters, the inferences that may be drawn from her unfortunate flight, and although that subject is not now presented in the exact order of time, I perhaps cannot do better than briefly consider and dispose of it.

The reasons which she herself gives for abandoning the protection of her household gods, and temporarily deserting her children for the purpose of avoiding the violence of the gathering storm are such as to carry conviction of their truth to every bosom. She was the teacher, and had been for years, of a large and highly respectable seminary; her reputation was her stock in trade; exposure was but another word for death; that she should shrink from it, therefore, was natural—was excusable. That she contemplated but a temporary absence, is plain from her conversation with Mrs. Smith, from her communication to Justice Barker, at the time of drawing up the power of attorney, and from the situation in which she permitted her family to remain.

But two matters remain, ere I surrender this cause to you. The first is the state of things a few days after the funeral; and the second, the interview between Mr. Recorder McIlvaine and the defendant. Let us take them in their order.

Mrs. Smith, who is a lady in every sense of the word, called

at Andalusia, I think the day after the funeral. Mrs. Chapman, apologizing for the want of servants, answered the door herself. She was dressed in black, with a white turban bearing a lilac border; and this little matter struck Mrs. Smith with some surprise; I really don't know why. Grief displays itself very differently in different persons, and in different circumstances. It is not in "customary suits of solemn black" alone that the heart exhibits its afflictions. Many of the gentlemen whom I have now the honor to address for the first, and perhaps for the last time, are disbelievers in external mourning; and whether they were or were not, they would hardly convict a lady of murder, from the color of her turban. Rely upon it, if she had been the wicked thing they would make of her, there would have been no deficiency in what may be called dramatic effect; her error would have been in excess; like the Ephesian dame, she would have swept the very earth with her widowed weeds, and veiled her face in sorrow. Her dress was not affected, her agonies were not eloquent, but they were not the less poignant or sincere:

"The grief that cannot speak,
Whispers the o'erfraught heart, and bids it break."

There was one expression, however, of hers which breathed volumes—that rather escaped from the laboring soul than was uttered by it—that was addressed to no one, though in the presence of Mrs. Smith—and that sounded like the knell of departed hope; departed, never to return. Casting her eye involuntarily upon the heavens, she exclaimed, in a stifled and subdued voice—"The sun—the sun—looks gloomy." This simple touch of nature unfolded more, much more, than all the studied forms and ceremonies of woe.

Again: Mrs. Smith, though surprised at first, must have been entirely reconciled to her deportment, as she at that time placed her child under the care of the defendant, and shortly after took up her own residence, and that of her husband, under this very roof. I will not weaken these facts by bestowing upon them a single comment.

On the afternoon of the 29th day of August, the Recorder,

accompanied by High Constable Blaney and Mr. Reeside, waited upon Mrs. Chapman at her house. The object, as it is stated, was to discover traces of Mina, with reference to his impositions, malpractices and forgeries, while at Washington. Mrs. Chapman, at the time of their arrival, was at church, with her sister, but shortly returned; and the Recorder being invited into the parlor, immediately communicated the purpose of his visit. He knew nothing at this time of her second marriage, and therefore much of her conduct, which with that knowledge he would have easily understood, appeared to this intelligent gentleman to be extraordinary. He spoke of Mina's character—of his falsehoods, of his frauds—and inquired whether she herself had not been plundered and despoiled by him. She hesitated, and denied it—until her letter, which had been intercepted, was produced, recounting a long catalogue of injuries to which she had been subjected. She even then rather appeared to evade or to extenuate the evils which she had suffered. But will you here allow me to inquire what course she should have pursued? Irrevocably wedded to a felon—the officers of justice upon his crime-covered track—was she to join in the general cry—was she to hunt down one to whom, bad as he was, she had plighted her faith? She gave no other information than was extorted from her—and I openly rejoice that she did not. Fidelity is the brightest jewel that adorns the female character; it is the last that woman loses—and it would have been an eternal reproach to her sex—it would have been perdition to her, when her vile husband's fate was poised before her, if the whole police of the city, with all their mental racks and tortures, could have extracted from her heaving bosom, a single groan to guess at. Had she then betrayed Mina, infamous and abandoned as he was, it would have supplied to the prosecution the most unanswerable argument of her previous guilt: to betray or destroy is but the same principle, differently developed.

Still not knowing the marriage, the Recorder proceeded, fixing his keen and inquisitorial eye upon her at the same time, to inquire whether she had any reason to believe that

Mina had contributed to the death of her husband. She changed color—her face assumed a livid hue—and she appeared for a moment as if she would have sunk to earth. She recovers, however, and replies—“No—he was his faithful friend; I cannot think it possible he should do anything so diabolical!” And yet it is thought this is not a becoming expression of surprise. According to my experience in human nature, it at once expressed surprise, doubt, affection, horror, and all the violent and conflicting emotions which the question was so eminently calculated to excite. But whether it did or not, we do not sit here to decide upon comparative strength of nerve—upon the various results on various individuals, of sudden and unexpected shocks—upon the change of the complexion—or the still more variable forms of passion or expression, depending as often for their character, upon the mind of the observer, as upon that of the observed. Mr. Phillips, in his valuable essay upon the theory of presumptive proof, speaking in reference to the celebrated case of Captain Donnellan, in which it was alleged that the defendant displayed more uneasiness than was even natural to one in his situation, makes these appropriate remarks: “It is a delicate thing to decide this question; it is a nice thing to fix the standard of human feelings, and to say what degree of perturbation an individual already branded with guilt or conviction, shall feel, when placed in circumstances which make him to be suspected of a capital crime. Lawyers, and those accustomed to see and advise with persons in that unfortunate predicament, can only tell the terrible apprehension that everyone feels at the idea of being brought to a public trial; it is altogether a new view of human nature, and we seldom estimate rightly, feelings which we have never experienced, nor expect to experience in our own persons, nor have witnessed in those of others:

‘To thee no reason!
Who good has only known, and evil has not proved.’”

But I go further than Mr. Phillips, and utterly deny even the competency of those who, from their office, are in the

habitual community with guilt, to decide from the expression of the face or the features, upon the impulses of the heart. Nay, more than this, their very knowledge of the worst part of mankind, with whom they are so frequently brought into contact, imbues the mind with jaundiced and unfavorable impressions of our nature, and leads them to detect a felon in every face—if you are bold, it is the hardihood of confirmed guilt—if you are fearful, it is the timidity of crime. I do not mean to say that every judge of a criminal court may become a Jeffreys, because, thank heaven, at this day the moral influence of public opinion provides a salutary restraint; but I do mean to say that whatever may be the theory of our rights, experience abundantly instructs us, that the moment a charge is preferred against an individual, he bears the stamp of Cain upon his brow, and inverting the best principal in criminal jurisprudence, he is almost uniformly considered to be guilty, till his innocence shall be established; and perhaps even afterwards. In these remarks no one can suppose that I speak in reference to any individual, much less to the highly respectable and amiable Recorder, for whom I entertain the sincerest personal and professional regard. I speak to human nature and common experience, and I do it the more confidently, as I acknowledge my own liability to the influence I thus deprecate.

In further illustration of this doctrine, I need only advert to the case introduced by my learned and eloquent colleague, of the unfortunate Thomas Harris, as reported in Phillips. In that case, though the defendant was utterly innocent, the fact of his changing color and appearing confused was relied upon as a strong, if not conclusive evidence of crime; yet that very confusion was produced, partly from the consciousness that the fact referred to might operate against him, and partly from the shame incident to a disclosure of his avarice. If, therefore, different causes entirely consistent with innocence of the particular charge, may create shame and consternation—and if sufficient independent causes can be shown, as in the present instance, how obviously unjust must it be, that it should be construed into evidence of the

imputed crime. It is like the attempt made by the prosecution in respect to the symptoms of the deceased, inferring, as they have done, an existence of poison, from indications of disease, which were altogether consistent with other, and natural causes.

As to the evidence of Blaney, but little need be said. It would rather seem, from what he says, that Mrs. Chapman apprized him of the direction of Mina's journey—though the Recorder does not mention it—as Blaney, it seems, soon after this conversation, wrote to Boston, and succeeded in arresting the offender. But I protest, once for all, against the testimony of such men as Blaney, whether for or against us. He is a police officer, speaking from police reports, or rather from the report of Mr. McClean, who was here, and did not condescend to lend his support to the Commonwealth. It is the business of a constable to suspect—and no one can escape him; carrying, as he always does, suspicion in one eye, and a search warrant in the other.

Thus, Gentlemen of the Jury, have I attempted showing, in the first place, that no poison was administered; and in the second place, that at all events, it was not administered by this defendant; either of which is sufficient for the purposes of the present case. If the defendant be innocent, it is not for me to show who may be guilty—that is the business of the prosecution. It can impart no gratification to me wantonly to travel out of the strict line of my duty, to load, or trample upon a fallen fellow creature.

In conclusion, allow me to observe, that to those who have been engaged in this discussion, and to those who shall be engaged in the determination of the present question, this matter of life or death may be a subject of utter indifference and contempt, inasmuch as it is contemplated in relation to others. Clothed in our own imaginary infallibility, what sympathy can be expected from us, by that insulated, hapless being, upon whom our irrevocable decree is about to be pronounced. Sympathy is ever the offspring of a common liability to evil, or susceptibility of good; and what penalty do you fear, or what privilege do you enjoy, in common with

an individual who is presented before you, suspected and accused of the most horrible of crimes. The very circumstance of her being placed at that bar is calculated to provoke involuntary prejudice, and however we may be taught that both justice and mercy should incline us to the belief of innocence while passing upon the fate of a human being, until guilt be unquestionable—experience, as I have already intimated, frequently establishes a widely different practice.

The law tells us—nature tells us—and humanity abundantly instructs us, that whenever a prisoner stands charged with an offense, and such an offense, instead of substituting the busy rumor, the misty moonshine of malice or prejudice, for the meridian light and fullness of truth, we should patiently await the disclosure of facts which the evidence itself, and the evidence only, can legitimately disclose; thereby placing our verdict upon a substantial foundation which, hereafter, in the hour of deliberate and calm reflection, may remain firm and unshaken. Pause, now while the opportunity is afforded—now, ere it be too late—now, while reflection comes with healing on its wing. Hereafter years and floods of penitence and remorse can never obliterate or wash away the consequences of an error which seals forever, and irretrievably, the defendant's melancholy doom. Considerations of this kind "all plead, like angels, trumpet tongued, in her behalf, and might almost persuade Justice to break her sword."

The charge in the indictment is most horrible and atrocious, it is true—a husband's murder! The strength of the testimony should be proportionate to its enormity. It can never diminish the horror of the charge, that the innocent should suffer. The defendant, nevertheless, bows submissively to your pleasure; if such be your terrible decree, let the axe fall; consign her to an ignominious grave and her children to pitiless orphanage. Return then to your own domestic circle—to your own firesides; and, surrounded by your partners and your offspring, recall and relate the lamentable occurrences of this day's trial; tell them that the popular clamor was too loud and too general to be escaped—the popular

prejudice too powerful to be resisted; tell them, that under those influences you have consigned a mother to a timeless grave, and her children to endless ruin; and thereby give them to understand how frail and feeble is the tenure of human happiness—human character—and human life.

I have now done, Gentlemen of the Jury, and the future destinies of the prisoner are committed to your charge. For herself, conscious as she is, of her own innocence, and advanced as she is in life, she feels comparatively but little. But you will pardon a sister's—and a daughter's—and, above all, a mother's emotions, while confronting that awful tribunal, upon whose stern sentence must depend not only her own prospects, so far as they remain to her—not only her own existence—but, as I have said, the hopes and very existence of those; to her more precious far than life. To your hands, however, we confidently resign her. You are the ministers of the law—the standard-bearers of justice—and she feels assured you will sustain the balance, with a firm and unwavering hand—let which scale may preponderate.

My duty is at last discharged—feebly and imperfectly, I acknowledge; but as fully as my health and limited abilities will allow. It remains for you to fulfil yours. In doing so, let not, I again beseech you, the client suffer for the faults and deficiencies of her counsel; but generously incline your ear to the pleadings of your hearts, and ever bear in dear and sacred remembrance that “mercy is twice blessed—it blesses them that give, and them that take.”

MR. ROSS, FOR THE COMMONWEALTH.

Mr. Ross: Gentlemen of the Jury—It becomes my duty, as the prosecuting officer of this County, to conclude this cause on the part of the Commonwealth. The important facts of the case have already been ably and elaborately commented upon by my colleague; and it therefore will be unnecessary for me to consume much more of your time in discharging the sacred trust which has been confided to me. I am well aware of

the responsibility under which I act, and of the painful and unpleasant duty which is imposed upon me. The highest crime known to the law of the land has been committed—a murder of the deepest and blackest dye has been perpetrated, and I appear before you as the representative of the Commonwealth, to ask in her name, that the perpetrator of this horrid deed be surrendered, in order that she may expiate by her life, the crime which has been committed. Such is the solemn and interesting duty which my official situation has imposed upon me; and in the performance of which, I shall be governed solely by what I believe the public justice of the country may require.

Much has been said by my learned friends on other side of the “fury” of the prosecution, and of the spirit and the manner in which it has been conducted. I appeal to your Honors on the bench, and to you, Gentlemen of the Jury, whether the counsel for the prisoner, in their zeal to defend their client, have not made an attack upon the prosecution as unjustifiable as it was ungenerous. In what instance has this “fury” been manifested? In what instance has this prosecution been pressed beyond the strict line of public duty? Nay, have we not, with the most tender and sacred regard for the interests of the prisoner, conceded to her every benefit, and extended to her every indulgence which either her counsel or herself had any right to expect? Look, for a moment, at the mass of testimony which has been adduced in evidence (a great part of which having no relevancy to the matter in issue), and ask yourselves whether we have not shown every disposition, consistent with our duty to the Commonwealth, to enable the prisoner to establish her innocence. In the honesty and sincerity of my heart, I can truly say that I would have rejoiced, not only for the honor of human nature, but for the sake of those innocent and helpless children, if, in the course of this investigation, one ray of light had shed its cheering and brightening influence upon the dark and gloomy picture, which has been presented to our view. Who would not hail with pleasure the return of the prisoner at the bar to the bosom of her family, with a character un-

tainted and untouched by the dark suspicion of a crime so unnatural as treason to her husband—to her children—and to her God? Who, indeed, would not rejoice to see, not only innocence established, but life saved? Certainly, no one. It is true that I appear as the counsel for the Commonwealth; but I stand before you with the same independence of action which any other individual of this community enjoys—neither incited by feelings of malice, nor influenced by the hope of reward. Never will I raise my voice in support of a prosecution which I believe to be iniquitous or unjust. Never will I ask for a verdict of conviction when, after mature and solemn deliberation, I could not lay my hand upon my heart, and pronounce a similar verdict of guilty. I would not plant a thorn in my breast, there to fester, and to rankle, and corrode the peace and happiness of my existence, by becoming the advocate of injustice, and the oppressor of the innocent. But I would prove equally faithless to my trust, and recreant to the cause of justice, if I shrunk from the painful duty of enforcing the rights of the Commonwealth, when her laws were violated, and the blood of a peaceable and unoffending citizen cried aloud for vengeance. Thus influenced, I can assure the counsel for the prisoner that I shall neither be deterred by their censure, nor seduced by their eloquence, from a conscientious discharge of the important duty which remains to be fulfilled.

The duty, Gentlemen, which you are called upon to discharge, is equally solemn and equally responsible. It is a duty, however, which your country—which the safety—nay, the very existence of society, require of you; and for the faithful performance of which you must answer to your God and your own consciences. The fate of the prisoner at the bar is placed in your hands. You are not only the arbiters of all she holds dear and sacred in this world, but you are invested to a certain extent with the power of deciding upon her life or death. Can I therefore urge upon you a stronger motive for dismissing from your deliberations every feeling of prejudice and of excitement, which this case may have produced in the public mind? God forbid that your verdict should be

in the slightest degree influenced by your prejudices. Remember that the ground upon which you stand is holy; and that the moment you passed the threshold of this sanctuary of justice an impartial administration of your duty required a sacrifice at its altar, of every passion, or feeling of excitement, which you may have heretofore imbibed. The life, the liberty, the reputation and the property of each one of us, depend upon jurors being uninfluenced by any considerations, and unbiased by any impressions, but the unerring voice of truth and of law. I feel confident, gentlemen, that in making up your verdict in this case, you will be governed entirely by the evidence which has been laid before you, and that you will not be affected "by the storm and whirlwind of prejudice," which the fertile imagination of the prisoner's counsel has created; and about which so much has been said in order to warn you of the danger of its infusing itself into your deliberations. No one can be more anxious than myself to guard you against even the probability of prejudice. The counsel for the accused have indeed evinced an extraordinary degree of sensibility in relation to this matter. The great crowd which has thronged this building during the progress of the trial, and the eager curiosity which has been manifested to listen to its details, have been seized upon as a theme for comment and for animadversion. My friend, Mr. McCall, has told you that it was "a shame upon human nature, that man could thus feed his soul with his brother's guilt;" and that it was evident from this assemblage of people that the cry of blood had been raised, and that the public mind demanded another victim to be offered up as a periodical sacrifice to public policy. Gentlemen, it is true that this case has produced the most intense and lively interest in every section of the country. It is true that its enormity, and its unparalleled atrocity, have produced a shock which has vibrated throughout the whole community. It is true that the issue of the trial is looked for, not only here, but everywhere, with an anxiety which has seldom been equalled. But it is not true, that we are surrounded by a pack of blood-hounds thirsting for the life of the prisoner, and ready to leap upon

their prey. The excitement exists, not against the accused, but against the crime. It is to hear and ascertain the truth, but not to sacrifice the innocent and the guiltless. Can, indeed, this excitement, thus created, be a matter of surprise? Is it not honorable to human nature, as well as to the community in which we live, that a deep sensation should be felt, when the life of a fellow being has been thus basely and treacherously destroyed? Remember, that it is no ordinary case of homicide, which you are now investigating. It is not the case of a murder perpetrated under the influence of intoxication; or of excited and angry passions; or where one, in order to gratify feelings of avarice, or of revenge, plunges a dagger to the heart of his unfortunate victim. But, on the contrary, it is a case where a wife has deliberately conspired against the life of her husband, and has thus become the murderess of the father of her children, and the destroyer of him whom she should have comforted and sustained. It is, indeed, a "most foul, strange and unnatural murder," and one which calls loudly for the avenging hand of retributive justice. The finger of Providence is plainly visible in bringing to light this deed of darkness. Notwithstanding the secrecy with which this crime was committed, and the length of time which elapsed before even a suspicion was awakened, it is now presented to your view, disrobed of its mystery, and in all the naked deformity of guilt, so horrid and so detestable, and without one palliating circumstance to screen the perpetrator from the awful punishment which the law prescribes.^c

I have now, gentlemen, finished my review of the evidence. I have endeavored to satisfy you that the deceased died of poison—that he was hated and detested by his wife, who had contracted a guilty passion for the Spaniard Mina, and that the thirst for gold, together with this unholy love, constituted the animating principle which quickened into life the serpent that has struck its "venom tooth" to the heart which had so fondly and so confidingly cherished it. I am willing

^c *Mr. Ross* here reviewed the evidence at length.

to reject all the other evidence, and to rest the case upon the proof of the illicit intercourse—the arrangements which were made to go to Mexico—the purchase of the arsenic by Mina on the 16th of June—the sickness of Mr. Chapman on the 17th—the marriage on the 5th of July following with the person who had just purchased the poison—and on the proof of the sudden flight of the prisoner, upon the first whisperings of suspicion. If these circumstances alone be not sufficient to satisfy you of her guilt, I tremble for the security of our lives, and for the safety of the community. Be not deceived by the supposition that Mina will be convicted, and that the sacrifice of his life will be a sufficient expiatory offering to the violated laws of the Commonwealth. The conviction of Mina depends, in a great measure, upon the verdict which you may render in this case. It is indeed extremely doubtful from the evidence now in our possession, whether Mina be not merely an accessory to this murderous deed; and if so, he never can be convicted until Mrs. Chapman, the principal, has been found guilty. The only question, however, for your consideration is, whether the defendant, now upon her trial, has committed the crime for which she stands indicted. You violate your oaths the moment that you suffer yourselves to be operated upon by the consequences of your verdict, or by any of the affecting circumstances which the eloquence of the prisoner's counsel have so vividly portrayed. You may feel for these little children, whose father is murdered, and whose mother's life you are called upon to sacrifice—nay, you may even commiserate the awful situation of the wretched and unfortunate prisoner herself—but you must be governed in your decision by the law and the facts, as they have been proved; and if there be anything in the case which should prevent the sentence from being carried into execution, a recommendation to mercy from the Jury who convicts, will always be received by the executive with respect, and be entitled to the highest consideration.

Remember, that it requires no stronger evidence to convict of an offense which is capitally punished than it does where the penalty of the crime is merely an imprisonment for a

term of years—you must be equally satisfied in the one case as in the other. If, therefore, you should deem the evidence which we have laid before you sufficient to convict her of an offense not capital, you are bound by the affirmations which you have taken—by your duty to the government which exercises its fostering and parental care over each one of us—and by every law both human and divine—to render in this case a verdict of guilty. As you regard the safety of your own offspring—as you value the security of civil government, pause, I beseech you, ere you suffer your minds to be influenced by any doubts which you may entertain as to the propriety of capital punishment. The law of your Creator tells you that “ye shall take no satisfaction for the life of a murderer, who is guilty of death, but he shall surely be put to death—for the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.” In this case it is the blood of a husband—of a father—which has been shed—and shed, too, under circumstances so appalling and so unnatural! She in whom the trust was greatest has become the assassinating wife, and the destroyer of her children’s father. And what benefit has she derived? Has she obtained wealth, or rank, or power, or happiness? No, gentlemen—but she has become the bride of a convicted felon, an outcast of society, and the curse of his race—she has gained a niche in the temple of infamy—she has inscribed her name upon the darkest page of guilt which the volume of man’s crime unfolds—she has become not only the outcast of virtue, of peace, and of fame, but whatever may be your verdict, she will be the shame of her children, and her children’s children, in each succeeding generation, until oblivion shall have wiped her name from the scroll of time.

I commit the case to your hands, confident that you will render such a verdict as the public justice of the country may require.

THE JUDGE’S CHARGE.

JUDGE FOX: Gentlemen of the Jury—If, from any cause, even the slightest prejudice existed in your minds against the

prisoner at the bar before the solemn duty which you are now performing was imposed upon you, I am sure that you have divested yourselves wholly of it, and that you are prepared to investigate and determine the cause upon the evidence before you.

It did not need the exhibition of her poor little children to awaken our attention to the cause, or excite our compassion for the situation of the prisoner. The facts which are proved, and which must govern the decision, are of a character so extraordinary as necessarily to arouse our minds to the keenest regard to the deductions to be drawn from them—and whether the miserable state to which she is now reduced be the offspring of her follies, as she herself alleges, or of the most shocking of all crimes, as is the allegation of the prosecution, it is impossible to regard her terrible condition without deep commiseration. But for us this is no question of feeling. A duty is prescribed by the law, and we are not at liberty to indulge any sentiment inconsistent with its strict performance. Let us then seriously incline our minds to the most careful investigation of the grave matters in proof before us, that we may be enabled conscientiously to perform the solemn duties enjoined upon us.

But, although we may not suffer sentiments of mere compassion for the prisoner at all to influence us in our examination of the cause, yet we are bound to approach it with hearts mercifully inclined, because, in a very important sense, mercy is a part of the law. You must start with the legal presumption that the prisoner is innocent, and that presumption must continue until her guilt is satisfactorily proved. This is the legal right of the prisoner. It depends not on the circumstances of any particular case, but is the common right of every one accused of a crime. The law covers the prisoner all over with an armor that can only be pierced by proof of guilt. It matters nothing, therefore, what rumors you may have heard, what publications you may have read, what suspicions you have entertained, or even what opinions you may have formed, in relation to the prisoner, before you were sworn in the cause. The law declares her innocent, un-

less the proof you have heard on her trial satisfies you of her guilt.

The mild spirit of our institutions has abolished capital punishments in every case except that of wilful, deliberate and premeditated murder. The Commonwealth does not seek blood. She unwillingly receives the victim from the hands of justice and, when the sacrifice is demanded, the whole community is horror-struck. There is not much danger, therefore, in Pennsylvania, of unjustifiable convictions in capital cases. Indeed the belief is, that even where the facts demand it, it is almost impossible to procure a capital conviction. Yet, I will say, I have never known a verdict of acquittal which I did not think justified by the evidence, although I may have believed that it would have warranted conviction.

Much has been said upon the evidence in this cause, as being presumptive, and not direct or positive; and many cases have been read and cited, showing the conviction and execution of persons in England of capital felonies, whose innocence afterwards was made apparent. These arguments, and these cases, only prove, that all human evidence, whatever be its character, positive or presumptive, like everything that partakes of mortality, is fallible. Infallibility belongs to Omniscience alone. We must use human evidence for the purpose of arriving at any conclusion whatever, respecting a question of fact. If the mind is fully satisfied, we must act upon such conviction, although, from the uncertainty of all mortal affairs, mistakes may be possible; otherwise the business of the world must stand still. The mind may be as completely convinced by presumptive as by positive evidence, and possibly may not arrive at the truth from either. Many cases might be supposed in which presumptive evidence would be more satisfactory than some degree of positive; for there are as many degrees of positive evidence as there are shades of character among mankind. Suppose two witnesses were to charge a man with murder, and swear positively that they saw him commit it. This would be positive evidence. Suppose, in his defense, he should prove that these witnesses were so infamous that no reliance could be placed upon their

oaths—that he himself was a man of the most upright character—that he had no reason whatever to destroy the person murdered, but that every motive of feeling and interest would probably induce him to preserve his life. Suppose it to be further apparent that the witnesses themselves would derive great benefit from the death of the person murdered, and from that of the person they had charged—that there were many circumstances to induce strong suspicions that they were the real murderers. This defense would be presumptive evidence, but it is manifest that it would overturn that which was positive. The true question, therefore, is not what is the kind of evidence in this cause, but it is what is the result of it in your minds. If it has failed to satisfy you of the guilt of the prisoner—if your minds are not convinced—if they vacillate and remain in doubt as to this question, you must acquit her, be the character of the evidence what it may, positive or presumptive, because the law regards her as innocent, so long as you have reasonable doubt of her guilt. But if the result of the whole evidence in the cause satisfies you that she is guilty—if you are convinced of that fact—if no reasonable doubt remains upon your mind, it is imperatively your duty to convict, even if the character of the evidence be wholly presumptive. Such is the law.

In capital cases the counsel for the prisoner frequently deem it their duty, not only to scan the evidence with the closest scrutiny, but also to comment upon the character, the motives and the conduct of the witness, with a freedom that would not be tolerated, under similar circumstances, if it were attempted on the part of the prosecution. So far as I am able to judge, we may place great confidence in the integrity of every witness in this cause. I have seen neither disposition nor motive for anyone to speak falsely, or to conceal the truth, excepting only in the poor little daughter of the prisoner. She, no doubt, had the strongest of all possible feeling, but who that heard and saw her can doubt her innocence of any intentional misstatement or concealment.

Ellen Shaw and Fanning have been assailed with much severity, but, as it strikes me, entirely without reason. Why

should they testify falsely against the prisoner? The motives attributed to them by the counsel, even if they exist, are wholly inadequate to impel them to such horrible perjury.

Even those gentlemen, eminent in science, who from the most public spirited motives, have afforded the Commonwealth their efficient aid in the investigation of this important question, have not escaped animadversion. It is essential to the public interest that they should know that a due sense is entertained of their services. They have sacrificed much valuable time, and much of comfort, with the most honorable disinterestedness, and, if they are to suffer, in the slightest degree, in reputation, how can they, or other gentlemen of similar attainments, be asked to render us assistance hereafter. We have thought it proper, therefore, that the acknowledgments of the County should be thus publicly tendered to them for the important services rendered to us in this investigation.

The charge against the prisoner is murder by poison. Therefore, there can be no question as to the grade of murder, whether of the first or second degree, inasmuch as by the law of Pennsylvania all murder perpetrated by means of poison is murder in the first degree.

The questions for consideration are two: (1) Did Mr. Chapman die by poison? (2) If he did, was Mrs. Chapman a voluntary agent in thus procuring his death?

As to the first question, there is much evidence. Indeed, all the evidence in the cause may be said to have a material bearing upon it, because all that may go to show that Mrs. Chapman procured his death, will serve to corroborate any other that will show his death by poison.

The first and most important evidence of the death by poison, and without which the prosecution could not be for a moment sustained, is that derived from the chemical examination, and the opinion of the chemists. Dr. Mitchell and Mr. Clemson, the gentlemen who made these examinations, have given us in detail their mode of proceeding, and their opinions as to the results. It is obviously of great mo-

ment that we should be able implicitly to rely upon their integrity and skill. Who and what are they? Dr. Mitchell is known in Philadelphia, not only as a physician of great eminence, but as a professor of chemistry, whose attainments in this science, are second, perhaps, to none, even in that great city, where chemical knowledge is in advance of any other place on this side of the Atlantic. His skill, his estimable character as a man, and the great caution he exhibited in giving his evidence, will authorize you to place the most unlimited confidence, not only in the facts he has proved, but also in the opinions he has given.

Mr. Clemson is comparatively a young man, but his opportunities of acquiring chemical knowledge have been very rare, and seem to have been fully improved. After studying the science several years in this country, he went to France, and has been assiduously employed, for about five years, in the practical laboratories of several of the most eminent chemists of the age. It is true, as is said by the defendant's counsel, he is mercurial, and he did not evince sufficient caution in giving his evidence. But his integrity of purpose has been most apparent, and his skill is unquestionable.

These are the gentlemen who were selected to make the examination of Mr. Chapman's stomach. Upon their evidence, as I have said, this part of the cause, at least mainly depends.

What did they do? Do not let us be deterred from a strict examination of this part of the case by the difficulties which it has been suggested we labor under from the want of chemical knowledge. The question now is, did Dr. Mitchell and Mr. Clemson detect arsenic in the stomach of Mr. Chapman? This, like any other fact, when questioned, must be proved by evidence. Now, what has been detailed to us for the purpose of supporting the affirmative of this proposition?

The stomach, as taken from the body by Dr. Hopkinson, was subjected to a chemical process whereby all animal matter was destroyed. This mass was then reduced by evaporation, and what remained was divided into three parts, and these were put into three several glass tubes. The object of

this was to test each of these parts, and thus have the opportunity of several experiments.

The flame of a spirit lamp was applied to the end of the tube in which the matter was, and if arsenic were present, it was expected to be detected in two ways: (1) By reduction (as it is called) of the metal. That is, that the metal would be thrown off in a gaseous form, and be condensed on a superior part of the tube. (2) By the odor said to be peculiar to arsenic. This is evidence of the presence of the metal, because caused by the metal itself. Clearly proved to exist, the presence of the metal is taken for granted by chemists for all ordinary purposes.

It is certain that no metal was reduced—that is, no metal was visible to the eye in metallic form. But it by no means follows that you may not believe that the metal was present, I mean even by chemical proof. Indeed, many cases might be supposed in which a jury would not be justified in rejecting chemical proof of the existence of arsenic, although the metal was not reduced. Suppose what are called the liquid tests were tried, and gave the characteristic appearances of arsenic and, that the precipitate being subjected to the action of fire, gave out the odor, and no other test attempted, this would be strong evidence for the consideration of a jury, and might or might not settle the question, depending on the other circumstances of the case. It might not be as conclusive proof as if the metal had been made visible to the eye, but, as I have said, it would be evidence of the presence of arsenic, on which a jury would be justified in acting.

Then, in this case, what degree of evidence has been obtained from the chemical examinations of the existence of arsenic in the stomach of Mr. Chapman? This is the true question.

The reduction of the metal was attempted, and the chemists failed to effect it. So far the presumption is that no metal was present, and so far, I suppose the evidence conclusive that so little arsenic was present as that the liquid tests would not detect it, otherwise it would have been reduced; for, where

these tests show arsenic, it may always be detected by reduction. So all agree.

The metal not being reduced, what is the next best evidence that arsenic was present? Is not the peculiar odor that evidence? From what I have learned in this cause, I suppose that it is. Formerly it was considered the best test, but as the science advanced, and the power of reduction was greatly extended, the authorities have discountenanced proof of this sort—Dr. Mitchell seems to think, unreasonably.

Then, what evidence have we of the presence of the peculiar odor in this case.

The matter to be examined was, as I have said divided into three parts, and placed in three several tubes. These were severally, at different times, subjected to the action of fire, and from each of them this peculiar odor of arsenic was given out. Dr. Mitchell and Mr. Clemson both swear that it was the odor of arsenic.

Dr. Mitchell says: "In conducting the experiment, and after these phenomena had been observed, the sealed end of the tube opened, under the action of the spirit lamp, when Mr. Clemson, who was holding it, turned round and said, 'Is anyone subliming arsenic in the room?' The reply was, No. He then called me to examine what the odor in the tube was, and I distinctly recognized what I believe to be the smell of the fumes of arsenic. The tube was subsequently heated at the part where the shining black matter was, and as the tube was open at both ends, a current of air was passing through it, and the arsenical smell was perceptible at the upper end. The other tubes were subsequently at different times heated in the same manner, and (with the exception of the accidental breaking of the first tube) the result was the same."—"The arsenical odor is generally esteemed, by high authority on this subject, as a very imperfect test of the presence of arsenic; but as the objections to this test are several, and as it was important for the purpose of public justice that this case should be strictly examined, I tested one by one, experimentally, the objections. The first objection is, that the mixture of animal matter so covers, when it

is volatilized along with arsenic, the odor of that metal, that it cannot be perceived. This objection does not apply in this case, inasmuch as it was perceived. Another objection is founded on the alleged similar odor of certain substances, phosphorus and its compounds, zinc, antimony, onions and garlic. The last of these could not, by any possibility, have been present in the matter that was sublimed by me. Antimony, zinc and the phosphates, mixed with animal matter and charcoal, were tested in similar tubes, under like circumstances. These experiments were repeated again and again, in the absence of my colleague, Mr. Clemson, without being able to produce the arsenical odor, or anything that I could mistake for it, unless I actually placed arsenic in the tube. Supposing myself liable to deception, because I knew what was actually in the tubes in all these experiments, I prepared a set of them containing these articles, phosphate of soda, kermes mineral, an antimonial, and some granulated zinc, and placed them while under treatment by a spirit lamp, and in succession, under the nose of Mr. Clemson, who was ignorant of the contents of the tubes. Among the tubes there was one prepared with arsenic in very small quantities. It was only when the tube containing arsenic was heated and placed under his nose that he said decidedly, 'that is arsenic.' He hesitated not a moment as to any of the tubes."—"Speaking from authority, I would say that the chemist cannot speak positively of the presence of arsenic, without finding the metal."

Mr. Clemson says: "The matter contained in the bottom of the tube was so exposed to the lamp as that the carbon of the lamp should act upon that portion of the arseniate of lime which had not been in contact with the carbon in powder. As I expected, we obtained an odor of arsenic. The second tube I exposed to the heat of the spirit lamp. I was expecting a ring, and the odor of arsenic struck me. I looked round and asked if anyone was burning arsenic. On examination I found that the end of the tube was broken, and the odor of arsenic still given out. I called Dr. Hopkinson and Dr. Mitchell and the servant, to smell this odor, and they all

agreed that it had the odor of arsenic. I know of no substance which, in my opinion, has the same odor, or which resembles that of arsenic. It is stated that there are certain substances which give off an odor resembling that of arsenic—certain vegetable substances, but here there were none. Phosphoretted hydrogen is said to have the odor. I have manipulated it, and never found the odor. I account for the smell by the action of the carbon in vapor from the lamp coming in contact with the arseniate of lime, not already decomposed. If, in the examination of any mineral substance I had discovered the same results, I should have said there were traces of arsenic. I believe that was the odor of arsenic that I smelled.”—“Authority goes to say that other substances than arsenic produce odors so like it that one may be deceived. A man can smell the shadow of a shade of arsenic. I cannot say what quantity will give the odor.”—“I have never been deceived when I have found arsenic by the blow-pipe, in detecting it afterwards. It might have been arsenic, but not in sufficient quantity to be weighed, and then we apply the term, “traces of arsenic,” in the description of the analysis of the mineral. It is the metallic substance that gives the odor.”

This is the evidence of the existence of the peculiar odor of arsenic in the stomach of Mr. Chapman. You will observe, that here in searching for arsenic, by three several experiments, on different parts of the same matter, precisely the same result was produced, viz., the peculiar odor of the metal; of course, the existence of the odor cannot admit of doubt.

Then, taking the opinions of Dr. Mitchell and Mr. Clemson, that no other matter was present that could have produced the same odor, you have the opinion of the chemists that arsenic was found in the stomach of Mr. Chapman. Unless these gentlemen have been deceived, under circumstances in which they seem to think deception almost impossible, arsenic was detected, and you as jurors will be justifiable in drawing that conclusion and in acting upon it. Thus, if you make this deduction, you have the proof by chemical tests, and the opinions of the chemists that arsenic was in

the stomach of Mr. Chapman in support of the position that he died by poison.

In support of this deduction, there is much corroborating evidence in the cause, a summary of which I am about to present to you for consideration.

1. The peculiar smell of the stomach, proved by Dr. Hopkinson and Dr. Mitchell, and the extraordinary fact, that another stomach into which a small quantity of arsenic was placed, and remained a considerable time, threw off precisely the same unusual odor. This, by itself, would weigh nothing, but as a coincidence, it is well worthy of consideration, the more especially as Christison speaks of a peculiar odor from a body dead by arsenic.

2. The preservation of the body, and more especially, the peculiar dryness of the small intestines. The soil in which the body was buried was very favorable for its preservation, but the fact that it was in a remarkable state of preservation is certain. Dr. Hopkinson says that the small intestines appeared as he supposed they would be if they had been hung up to dry. This extraordinary appearance alone would be of little moment, but acquires some importance in connection with the other facts in the cause.

3. The symptoms of the disease, and the opinions of the attending physicians. His attending physicians were astonished at the fatal result of his disease. Dr. Phillips says that, at the time, he was not satisfied as to the cause of his death, and that he could not account for it; and Dr. Knight speaks to the same purport. Cholera morbus did not satisfactorily account to them for his death, although no suspicion of foul play then existed, yet the symptoms and death alone excited their astonishment, and neither are able to account for it. The symptoms, although each one may be referable to natural causes and death by cholera, all agree that the whole are such as probably would precede death by arsenic. Take the symptoms of such death as described by Dr. Togno, the medical witness of the defendant, and compare them with those which are proved to have existed in Mr. Chapman's case. Dr. Togno says the general symptoms of poisoning

by arsenic are "violent vomiting one, two or more hours after taking the poison—a constriction of the throat, pain and burning in the stomach, great lassitude, disabling the patient almost from moving after the vomiting has continued some time, thirst—purging follows. The circulation is slow, and participates in the general prostration of the system. Mr. Chapman had no symptom that a man would not have had who died by arsenic.

4. The opinions of medical men founded upon the *post mortem* examination, and the description they have had of the symptoms. Dr. Hopkinson says that death was caused by the action of some violent substance upon the stomach. Dr. Coates says, "From what I saw, and the evidence of Drs. Phillips, Knight and Hopkinson, I am of opinion that Mr. Chapman died by the action of some corrosive poison, or irritant poison, probably of an arsenical character." Dr. Mitchell, after giving his reasons in detail, says, "I am unable, after a careful and considerate view of the whole ground, to resist the conclusion that Wm. Chapman died because of the presence of arsenic in his stomach."

Thus far, I have confined my examination to the chemical proof and medical opinions as to the death by poison, without regard to the other proof in the cause. If you place full reliance upon the integrity and skill of the witnesses, you will be justifiable in considering their opinions as proof of the facts upon which they are given.

But in corroboration of, and to be taken in connection with the foregoing, there is other evidence of a very important character. On the 16th of June, Mina bought poison, and that poison arsenic, upon what, so far as appears, was a false pretense. On the 17th of June, Mr. Chapman was taken sick with his mortal disease, now pronounced by the physicians, to be a death by poison. On the 20th and 21st of June, several chickens, and a large number of ducks coming out of the nest of Mr. Chapman, died in an extraordinary manner. The ducks at the time believed to die of poison. Now, although ducks are subject to an acute disease, that carries them off suddenly and in great numbers, yet these facts, under the

circumstances, are well worthy of consideration. On Sunday, the 19th, Mr. Chapman, was seen by Dr. Phillips. He had recovered from his illness, and was in no dangerous, or even uncomfortable situation. He continued thus till Monday afternoon, the 20th—then he had all the symptoms of poison by arsenic.

I have now presented a summary of the evidence of the death by poison, independently of the proof which has been given, showing the agency of prisoner, in procuring his death. But there is much evidence as to this latter question, which is applicable to the former. Indeed, all evidence that will support the position that she was his murderer will corroborate that which is given to prove that he died by arsenic, for it is certain, that if murdered at all, it was by arsenic. You will, therefore, still keep your attention awake to the applicability of the additional evidence, as well to the question of the death by poison as to that of her agency in procuring it.

2. Did Mrs. Chapman do the murder, or was she present aiding and abetting?

In presenting this part of the case to you, I at the same time think it my duty to make a point for the prisoner not made by her counsel—probably because they did not think it prudent. It is, that suppose Chapman was poisoned, and his wife in adulterous or criminal intercourse with his prisoner, her defense would exceedingly difficult, even if innocent, for those things which might be evidence only of criminal passion, for the murderer, might be construed as evidence of participation in the murder. This, certainly, is a possible case. Therefore, in examining the evidence, take the consideration I have presented, along with you, and if the facts and circumstances proved against her, can be accounted for on the supposition of criminal intercourse only without necessarily inferring the murder, you will put that merciful construction upon them.

Did Mina do the murder with her aid, or did she do it with his? The first question that strikes the mind in the inquiry is, why should she do the murder? What motive could she have for destroying her husband? The prosecution answers

this question by saying, that she was infatuated by a guilty passion for Mina, and an avaricious longing after the boundless wealth of which she believed him possessed, and leagued with him to destroy her husband, for the purpose of unrestrained gratification.

This allegation it is for the prosecution to make out by the evidence. Let us examine it in detail. (The JUDGE here recapitulated those parts of the evidence of Mary Palethorpe, Ellen Shaw, Esther Bache, Ann Bantom and Fanning, which go to show the improper intercourse between Mina and Mrs. Chapman, and the state of feeling between Mr. Chapman and Mina, and then continued):

That the prisoner was most strangely infatuated with Mina from the commencement of their intercourse up to the time of their final separation, cannot be questioned. If the testimony of Ellen Shaw is believed, acts utterly inconsistent with innocence are fully made out. If the prisoner did, at different times, kiss Mina, and suffer him to kiss her, and suffer him to rest in her arms singing love songs, it is very strong evidence of criminal intercourse between them. Taking the difference of their ages, the fact that she was a married woman, her infatuation, and the hasty and indecent marriage, ten days after her husband's death, in connection with those facts proved by Ellen Shaw, and the probability that they were living in adulterous intercourse is very great. That Mr. Chapman believed it is certain, if you credit Fanning or Ellen Shaw; yet, however improper or criminal their conduct towards each other may have been, there is no positive proof of adultery, nor of anything from which it must necessarily be inferred.

It is true that she seems to have had views of going to Mexico with Mina—that she considered her husband in the way of her ambitious or avaricious aspirings; and that she wished him “gone.” These things add much weight to the other evidence; and taking the whole together, it is for you to say whether you can draw the conclusion, that adulterous intercourse existed between them. If it did, that fact will be of great weight in the question whether she is guilty of the mur-

der, for it would, with the other facts proved, be very strong evidence of a motive for the commission of the crime.

Supposing her to be an adulteress, or given up wholly to her infatuation, those facts which otherwise weigh little against her may have very great power. On the 16th of June, she was in the city with Mina, when he purchased the arsenic. They returned home, and on the next day Mr. Chapman was taken ill. On the 19th, when Dr. Phillips did not believe he was seriously ill, she wrote a note to Mr. Sheetz, the pastor of All Saints Church, requiring prayers to be put up for her husband, as if he was in extremity. On the same day, she calls Mr. Vandegrift to go to Mr. Chapman to receive directions that J. W. Chapman's family were not to be invited to his funeral. On the 19th, Dr. Phillips, believing Mr. Chapman's indisposition to be very slight, ordered chicken soup. This was made on Monday. Ann Bantom saw it made. It was taken by Mrs. Chapman into the parlor, where Mina was.

Here, it has been supposed that the poison was put into the bowl of soup—but that cannot be. It seems to be impossible that Mrs. Chapman should have put poison into this, to have poisoned her husband with it, and then have placed it on the kitchen table; and suffered it to remain there several hours, exposed to the chance of being eaten by her servants, who dined at the table; or by her own children, whose dining room adjoined the kitchen.

If Mr. Chapman was poisoned, as heretofore I have supposed, I look in vain for evidence to show distinctly how he was poisoned. Was the arsenic in the soup? He was taken much worse directly after he took it. If the poison was in it at all, it probably must have been in a portion taken from the bowl, but of this there is no evidence. If, however, the evidence is clear that he was poisoned, his being taken ill directly after eating the soup is strong evidence of the time and manner. From this time his illness ran a rapid course. He suffered much and requested Fanning to stay with him. Mrs. C. did not go into his room but once during the evening,

and, although much pressed by Fanning to do so, she refused to send for a physician.

If he were poisoned, the evidence is almost irresistible that the deed was done about the time he took the soup. Who could then have poisoned him? Had his wife a motive sufficient to move her to the commission of so terrible a crime, as well as what she might have deemed, a safe opportunity to perpetrate it? I have already adverted to the evidence which precedes his illness, and some facts of no little weight remain to be noticed, which occurred after his decease.

On the 5th of July, she is married to Mina in the city of New York. They separate on the same day. She goes to Schenectady, he to Andalusia. On the evening of that day she writes him a letter evincing all the extravagance, considering her age and his youth, of a most ridiculous passion. Now, when was the courtship of which this marriage was the result, ten days after her husband's death? Was it before his death or after it? In either case, what conclusion ought we to draw?

On the 31st of July, she writes him another letter of a very different character. The same infatuation still seems to exist, but all levity is gone. Retribution for her folly or her crime has already overtaken her, and the deep feeling and, apparently deeper meaning with which, in the bitterness of her heart she says, "Believe me, Lino, that God will not suffer either you or me to be happy on this side of the grave," as well as this whole letter is worthy of your most serious attention. It was written after she was fully apprized that Mina was a villain, and it was manifestly intended for no eye but his own. Take in connection with this letter the extraordinary and mysterious power that he exercised over her after it was sent, as proved by her declarations to Ann Smith. She, in the presence of her sister, charged him with some of his villainies, and declared her wish to be separated. He apparently consented, but required a secret conference before he went. She granted it to him, and notwithstanding the cruelties which he had practiced upon her and her daughters, so strongly complained of in the letter, notwithstanding she

must have known he was every way a villain, she returns to her sister and says, "Sister, Lino is not an impostor, he is a clever fellow."

On the 17th of September, she herself laid before Mr. McIlvaine the most conclusive evidence that Mina was an impostor, and guilty of a forgery. On that same evening, a publication in the *National Gazette*, in Philadelphia, alluded to her as a participator in the crime of poisoning her husband.

On the 19th of September, she flies, notwithstanding she was warned by Mrs. Smith, the day before, that it would be evidence against her. Why did she fly? Was it to escape the punishment due to crime, or, as she alleges, the timidity of an innocent woman, who, perceiving that appearances were against her, had not resolution to face them? Of this, you are the judges. Flight may be very strong evidence of guilt, or it may weigh nothing, according to the circumstances under which it takes place. The legal presumption from flight is against the prisoner, and it lies upon her to rebut it.

Much evidence has been given in support of the prisoner's character. A number of very respectable witnesses have fully proved that, for a number of years, she was much respected, particularly by those whose children had been placed at her school. But all this is much weakened, if not wholly destroyed, by the evidence of Blayney, a high constable of Philadelphia, that from the year 1829, her character has been bad, gradually getting worse, and that his information is derived from the police of the city.

The evidence of the prisoner's daughter, Lucretia Chapman, has been relied upon, to show that there could have been no poison in the bowl of soup. Without her evidence, I think such would be the presumption, and she is of course strongly corroborated.

I now, gentlemen, leave this case with you for your decision. If you are satisfied that William Chapman was poisoned, and that his wife was the voluntary agent, or was present, aiding in poisoning him, the law draws the inference that she is guilty of murder in the first degree, and it is your duty so to pronounce. But, if you are not satisfied with the proof,

if upon the evidence a reasonable doubt exists, whether she be guilty or not, 'the law calls upon you to say not guilty.

February 25.

THE VERDICT.

At 9 o'clock on Saturday night, the jury retired, for final deliberation. At 11 o'clock, the ringing of the court bell announced that they had agreed upon their verdict, which was soon after rendered and recorded in open court of *Not Guilty*.

The *Prisoner* was then discharged by proclamation.

THE TRIAL OF CAROLINO DE MINA FOR THE
MURDER OF WILLIAM CHAPMAN,
ANDALUSIA, PENNSYLVANIA,
1832.

THE NARRATIVE.

Mina was tried for the murder of Mr. Chapman at the next term of the court. The evidence was nearly all a repetition of that given at Mrs. Chapman's trial. *Ante*, page 107. The question was raised as to the admissibility of the evidence of one of the servants, after the acquittal of Mrs. Chapman, who testified at her trial to her declarations. The Court decided that it should not be admitted. Some evidence was put in concerning experiments made by the chemists since Mrs. Chapman's trial and Dr. Mitchell was more positive than on the first trial of the presence of arsenic in the deceased man's stomach and he testified that if confined to one single test to detect the presence of arsenic, he would prefer the odor.

There was one witness, however, whose testimony was given for the first time—Officer Blayney of Philadelphia. He proved that when in his charge being taken from Boston (where he was arrested) to Philadelphia, Mina was seized with one of his fits. A physician who was on the boat could not explain it. Afterwards Mina persisted, against the officer's objection, in making a statement to him. He said he and Mrs. Chapman had had unlawful relations before the husband's death and that after that Mr. Chapman was taken ill; that when the woman brought up the bowl of soup he saw Mrs. Chapman "put physic in it. She take it from my bottles. After Mr. Chapman take the soup he take very bad and die. Mrs. Chapman then come kiss and hug me and say, 'Lino, I want you to marry me'—I say 'no' not till I ask my father.

She say, 'Oh, yes, I love you so much.' Then I say, 'when Mr. Chapman get bury, then I marry you.' Then she say, 'We get marry in New York.' ''¹

The jury brought in a verdict of guilty of murder in the first degree, and he was hanged.

THE TRIAL.²

In the Court of Oyer and Terminer, Doylestown, Pennsylvania, April, 1832.

HON. JOHN FOX,³ *President.*

HON WILLIAM WATTS, } *Associates.*
HON. WILLIAM LONG, }

April 25.

The indictment had been found at a previous term of court: the prisoner arraigned and pleaded *Not Guilty*, and his trial adjourned until after the Lucretia Chapman Trial.⁴ The *Prisoner* today was brought to the Bar.

*Thomas Ross*⁵ and *William B. Reed*,⁶ for the Commonwealth.

*Samuel Rush*⁷ and *E. T. McDowell*,⁸ for the Prisoner.

The following named jurors were severally sworn or affirmed: John Robbarts, sworn; Jacob Stover, affirmed; John Webster, affirmed; Amos Torbert, sworn; Henry Baringer, affirmed; Clayton N. Richardson, affirmed; George Trauger, sworn; Jonathan Ely, affirmed; John T. Neely, sworn; John Headly, affirmed; John Beatty, sworn; Ezra Buckman, affirmed.

¹ W. H. Blayney, pp. 195, 400.

² *Bibliography, ante*, p. 106.

³ See *ante*, p. 106.

⁴ See *ante*, p. 107.

⁵ See *ante*, p. 107.

⁶ See *ante*, p. 107.

⁷ See *ante*, p. 107.

⁸ See *ante*, p. 107.

THE EVIDENCE.

The following evidence was adduced on the part of the Commonwealth, in addition to that al-

ready given in the course of the former trial:

THE WITNESSES.

*Dr. Phillips.*⁹ From the symptoms observed, am at a loss to say what was the cause of his death. They were not such as would probably have arisen from arsenic; at any rate as easily reconciled upon that cause as any other. If, upon a post mortem examination, arsenic had been found, should have considered the symptoms reconcilable. If a small quantity of arsenic had been taken the day before, the sickness would have probably continued; there was a mystery over the whole occurrence to me; was not able to reconcile the symptoms with those of cholera morbus, and therefore I inquired of Mrs. Chapman, at the time, in order to discover the cause; cholera morbus, when fatal, very frequently terminates in twenty-four or thirty-six hours.

*Dr. Knight.*¹⁰ Saw Mina in the room on Wednesday night, and, I think, Tuesday; when called upon to prescribe for Mina, found his pulse natural; nothing out of order; my opinion was that he had no fits.

Cross-examined. Visited Mr.

C. three, four, or five times on Wednesday; my first visit was on Tuesday evening; persons having fits generally labor under a disturbance of the system, the pulse being either excited or depressed—there was nothing of this in Mina. At his request I bled him; should bleed a person if he asked me to do so, whether his pulse required it or not. My opinion at that time was, that Mr. C. died of cholera morbus; considering nothing but the symptoms that were present, do not feel prepared at this time to say what was the cause of his death; there was no other case of cholera morbus in the neighborhood.

*Benjamin Butcher.*¹¹ Mr. C.'s mouth looked purple; his body seemed remarkably stiff; this was not more than one hour after his death; had laid out other bodies; never observed such stiffness before.

*Mrs. Esther Bache.*¹² Never saw Mina scowl on any other occasion than on that at the breakfast table.

*Ann Bantom*¹³ called.

Mr. Rush objects to receiving declarations of Mrs. Chapman in Ann Bantom's testimony. The declarations of co-defendants against each other cannot be given in evidence.

⁹ See *ante*, p. 124.

¹⁰ See *ante*, p. 125.

¹¹ See *ante*, p. 126.

¹² See *ante*, p. 118.

¹³ See *ante*, p. 119.

The COURT. The only difficulty now is that which arises from the fact that Mrs. Chapman has been tried and acquitted.

Mr. Rush. Then we are upon *terra incognita*—the point is a new one. They are not co-defendants, because Mrs. Chapman has been acquitted. They are not now jointly charged. Community of purpose no longer exists now.

Mr. Ross. This was an indictment which involved a conspiracy. It does not affect the admissibility of this evidence, that one of the conspirators has been acquitted—and in order to prove this I hold in my hand an authority, 1 East's Cr. L. 351—to show that a person charged as aiding and abetting, may be convicted, even if the principal has been acquitted. The words in the indictment are the same—"aiding and abetting." This is the declaration of Mrs. Chapman accompanying the commission of the murder, and it is for the Court to say whether there has been such a community of action proved as to render this declaration admissible.

The COURT. This is not entirely free from difficulty. There is a change of circumstances since her acquittal. Before her acquittal, she could not have been compelled to testify; now she might be compelled to do so (putting aside the fact of her marriage with Mina). That being the case, I think the declaration cannot be given. I have examined into it since last court, knowing it was an important question, and this is the best judgment I can form upon the subject, although I must say it is not entirely free from doubt.

Frederick Fritz. Came on from Boston in company with Mr. Blayney at the time he was bringing Mina; I had some conversation with Mina respecting his marrying Mrs. Chapman, etc.; asked him whether he was married to her; he said he had married her in New York; he told me he had had connexion with her before, during the lifetime of her husband; he said she came to him, and was in his room very often.

*Willis H. Blayney.*¹⁴ Went to Boston after Mina; the first time I saw Mina was in the jailer's office; he was called up to state what belonged to him in his trunks; wished to bring his goods along; he did so, and I gave a receipt for them, before starting; we then proceeded, at

five o'clock in the morning, to Providence, in the stage, and from that on home; on board the steamboat, after dinner, he was taken with a fit; a physician being aboard, I got him to see to it; the fit passed off after a short time and the physician said he did not know what to make of it. Some time in the afternoon, he wished to make some confidential communications to me; asked him on what subject? He said on the subject of Mr. and Mrs. Chapman; told him I did not wish to hear any thing; that he had better keep what he had to himself; a short time after, saw him in conversation with Mr. Fritz. Mina then came to me, said he wished to talk with me, and said Mrs. Chapman had come to him, and that he had had

¹⁴ See *ante*, p. 195.

connexion with her some few days previous to Mr. Chapman's death; we then parted; Mina was taken very sick shortly after, vomiting a great deal (we were then coming down the Sound), and continued so all night; after breakfast next morning, as we were getting into New York, he took me privately aft the boat, and stated that he wished to have a conversation with me in private; he wished nobody else to hear; told him he had intimated that two or three times to me; that if he would answer me two questions, I would then listen to him; they were these: asked him whether he had ever

been in the piratical service, or whether he had ever been convicted, or in jail? He said he had not been in either; told him he was very foolish for talking in the manner which he had, on board the boat to strangers; what was stated after that, I beg the Court will not press me to divulge; and which I cannot divulge, consistently with my duty as a police officer; told him if he would answer me those two questions, that nothing of it should appear against him on his trial, if he was indicted for the murder of Chapman; told him nothing else.

Mr. Rush objected to the confession being given in evidence, it having been made under the promise of favor.

Mr. Reed admitted the principle contended for in its fullest extent, but denied its affecting the evidence now offered. This is not a confession of guilt. It is a statement made by Mina with a view of shielding himself. There was no admission of his having participated in the murder.

The COURT. Any declaration which a man makes, drawn from him by offer of favor or by threats, no matter to what extent it goes, cannot be given in evidence. This point was recently decided by myself in a case of arson, in Montgomery county. The question, therefore, now is, whether this promise of Mr. Blayney comes within the rule of law.

The COURT asked *Mr. Blayney* to repeat his promise, which he did.

The COURT were unanimously of opinion that this was not a confession drawn from the prisoner upon promise of favor.

Mr. Blayney. I asked Mina whether he had a medicine chest; he said he had, and had left it in Boston jail; asked him whether he had arsenic in it; he said he had medicine or stuff in it that would kill people, and kill rats; asked him whether he gave any of the medicine to Chapman; he said no, he was innocent; he said that when the woman brought up the bowl of soup he saw Mrs. Chapman take the soup from the

woman; she then put the physic in the soup. I asked him, "Did you see the physic?" He said, "No; she take it from my bottles; after Mr. Chapman take the soup he get very bad and die; Mrs. Chapman then come, kiss and hug me, and say, Lino, I want you to marry me; I say, no, not till I ask my father; she say, Oh, yes, I love you so much; then I say, well, when Mr. Chapman get bury, then I will marry you;

then she say, we get marry in New York."

Cross-examined. 'I could not understand him for the first day scarcely; was obliged very often to make him repeat and explain.

*Dr. Hopkinson.*¹⁵ The inflammation presented the appearance of such a one as would have been caused by some active corrosive substance or poison; my reasons are derived from its intensity, and from its stopping at the communication with the intestine; but, on the other hand, extending into the esophagus.

Cross-examined. Inflammation of the stomach is found in fevers, in apoplexy, and in cholera morbus; a violent case of poison might resemble a violent case of cholera morbus; in this case a high degree of inflammation extended all over the stomach, and into the esophagus; am not aware of having ever examined a body in which death was occasioned by cholera morbus.

Cholera morbus is very rarely fatal in this country; when it is, it usually terminates in from one to three days, or more; symptoms of cholera morbus are, first, a sickness or nausea, with some pain in the belly; this is followed by a vomiting, first, of the contents of the stomach, and then bile, which is also discharged per rectum; cholera morbus is essentially a purging and vomiting of billious matter; sometimes the patient has great debility, weak pulse, and towards the end, cold extremities; those are the general symptoms; chemical authorities differ in many points; never before examined a body that had been buried; should think a per-

son might have died of cholera morbus, and the body present precisely the same appearances after death as in the present case; authorities are not agreed upon the point, that the reduction of the arsenic in metal, upon chemical analysis, is the only evidence of its presence that can be strictly relied upon.

To the COURT. In the majority of cases of cholera morbus, inflammation is found in the intestines; though this is not invariable. Would not hesitate to say, from what I have heard of the symptoms, that Mr. Chapman could not have died of apoplexy.

Mr. Durand. Have studied chemistry, which is closely connected with my business. Arsenic has a distinctive odor; do not think I could be mistaken in the odor of arsenic unless the quantity were too small to produce a distinct odor; if an experienced chemist had detected the odor, I should, for ordinary purposes, have relied upon it as an evidence of the presence of arsenic think a well defined smell would be the best single evidence of the presence of arsenic. Recent authorities hold the same doctrine as respects ordinary chemical pursuits.

Cross-examined. The smell of arsenic resembles nothing so much as that of phosphorus acid. Garlic has not a smell like it; zinc has a smell something similar, but not so near as phosphorus; antimony has not a similar smell, except there be arsenic mingled with it, which is often the case, these metals being often found together in their native state; I think onions,

¹⁵ See *ante*, p. 148.

after a chemical analysis, would not give out such a smell. Am a practical chemist.

*Dr. Coates.*¹⁶ Have opened a number of bodies after death by cholera morbus, two of which were adults. In both these cases the stomach was full and distended.

James B. Wood. Reside in Philadelphia; I keep a hotel; last July Mina called and asked if I wanted to buy a dearborn wagon and horse; said no; he asked if I could sell them; I said yes; he said a nobleman had left him some old-fashioned things and he wanted to sell; he sent up in the afternoon; I tried to sell but couldn't; told him so; I said I would make an offer of forty dollars and if he could do better he might; went out of town and left the money; when I came home my young man gave me the receipt.

*Mr. M'Irvine.*¹⁷ Told Blayney I thought he had forgotten I had spoken to him of the poison; on Sunday, 27th August, made the first inquiries in regard to the case at Andalusia, with Blayney and Reeside; saw a neighbor and conversed with him (Blayney and Reeside in the carriage) about the soup and chicken; we then went to Bristol to see Dr. Phillips; on 15th September went to New York, and Blayney went; on landing we met the police clerk of Boston and I told him the whole history of the soup; I detailed in my letter to the Mayor of Boston all the particulars I had; this was before Blayney's going for Mina.

To the COURT. The custom is, the police officer investigates the truth of the facts told to the officer; if any be false, the officer is released from his pladge of secrecy.

To *Mr. Rush.* The cases I know of are, where questions were asked by defendant's counsel, and objected to on ground of policy by the Commonwealth. The first publication was on the 16th September, in a New York paper, and on the 17th in National Gazette. Mr. Chapman's name was not mentioned; think he was arrested on the 9th September in Boston; must have written about the 4th or 5th; nothing was said of the soup in the publication.

*Dr. Mitchell.*¹⁸ Since the trial of Mrs. Chapman, have examined the subject of arsenic with a greater degree of attention; put a grain of the white oxide of arsenic, combined with potash, into a stomach and portion of intestine obtained from the alms-house, and left it in two months, or more, perhaps; the stomach did not putrefy in that time, became much drier and gave out an odor exactly like that of the stomach of Mr. Chapman; and this fact I tested by questioning others; since the trial of Mrs. C. have endeavored to recover that arsenic by chemical process, and found that the liquid tests gave the same unsatisfactory appearances, but the metal was reduced so as to form characteristic rings in eight very small tubes; do not consider my analysis of Mr. Chapman's stomach a perfect one; because it was my first at-

¹⁶ See *ante*, p. 150.

¹⁷ See *ante*, p. 144.

¹⁸ See *ante*, p. 154.

tempt of the kind; for, although I lecture on medical chemistry, the professor of medical jurisprudence in the same school has charge of that particular department; the process was not well calculated to detect minute portions of arsenic; although a very good one for a larger quantity; it was also unsatisfactory from the state of knowledge at that time respecting the nature of the black shining ring, which I have since ascertained not to be formed of charcoal, and know of only two substances which will produce it, and both of them are poisonous, viz: suboxide of arsenic, and cinnabar, or sulphuret of mercury. When neither of these is present in the tube, a shining black ring is never thrown up, as far as I can ascertain by experiment. It was also unsatisfactory because the crust of metallic arsenic is considered by the highest and nearly all authority, to be essential to the detection of arsenic. I now consider that among the worst tests, since it is imitated exactly by another substance, not known to do so at the first examination. Sublimed cinnabar, to the eye, imitates arsenic closely. Considering then the whole process a failure, all the sublimable matter in the tubes was dissipated by the trials for the smell. The analysis of the alms-house stomach was made with more matured care, and by a different process. I subsequently endeavored to learn the value of the arsenical odor as a test. With similar tubes, and at the same lamp, I endeavored to produce that odor by means of those substances which, in that respect, are said to resemble arsenic; but was

not able to produce that odor by any of them.

Mr. Clemson being absent during these experiments, on his return I went over them again, concealing from him the contents of the tubes; presented them to him separately, and did not produce an odor which he took for arsenic in any case where that body was not present. I presented one containing arsenic, and he was not deceived in that tube. From the symptoms given, post mortem examinations, and analysis, my opinion is, that Mr. Chapman died from the presence of arsenic in the stomach. This opinion is given on the combination of circumstances, the whole series, and not exclusively upon any part of it. I believe the symptoms of "burning pain" might exist in cholera morbus, because it proceeds from inflammation. The stiffness of the body immediately after death is not a common appearance, and is a characteristic of death by arsenic. This is an opinion formed from several writers.

To *Mr. Rush*. As I did not make notes, do not certainly recollect where I found that opinion. It is, I believe, in Christison, Orfila, Jæger, etc. Did not form the opinion as to the death by arsenic until I heard the testimony in Mrs. C.'s case; think the chemical proof is not quite conclusive, and could not alone settle this case; think better of it than I did originally. The first test was sulph. copper; it threw down a dirty green, not such as arsenic would have produced in clear water; not characteristic of arsenic. The nit. silver did not act satisfactorily. Metallic ar-

senic was not obtained. The shining black ring and the arsenical odor were produced. The arsenical odor would, in chemical or scientific purposes, suffice to establish its presence. I would not like to trust to that alone in judicial investigations. When the experiments were closed with Mr. Chapman's stomach, I considered them as a failure, or not demonstrative of the existence of arsenic at that time. It is from my subsequent experiments I have come to a firmer opinion of its presence. There was no alkali used in the experiment with the sulphuretted hydrogen. The quantity of arsenic recovered may be very small. Christison, in a case of poison, obtained one-twentieth part of a grain; but from how much he could not know. In abstract experiments, not from the body, Berzelius has, if I remember well, sublimed one hundred and eightieth part of a grain, and says he things one three-hundredth would form a visible crust. As to the tests, the quantity of it which they may detect in unadulterated solution, in clear water, is very minute. There is no instance recorded of a less quantity than thirty grains killing a full grown individual; gave a dog sixty grains; since Mrs. C.'s trial; it did not kill him; he vomited. The dog vomits so easily, that he threw it up probably immediately. The duodenum is the intestine next the stomach. Authority is decidedly in favor of the fact, that other substances produce an odor so like that of arsenic, that it may be mistaken, and that it is not sufficient proof. Chemistry is a progressive and changing science.

To *Mr. M'Dowell*. Christison

is undoubtedly the best English authority on poisons. Orfila the best French.

To *Mr. Reed*. There are nine hundred and sixty grains in two ounces. Many cases where no arsenic was found after death, in cases where it caused it, are recorded.

To *Mr. Ross*. The symptoms and other phenomena detailed, were, some of them, such as arsenic might produce; some such as it probably would produce; and others such as perhaps nothing else could. Having endeavored to exclude all other testimony, I should on these alone have made up my mind as to his death. I cannot feel certain that I am not influenced by the other evidence in this case, but think that the train of symptoms, condition of the dead body, and chemical investigations, combined, afford strong and sufficient ground for the opinion given.

To the COURT. Have never been deceived by the odor of arsenic; there could have been no substance in the matter examined that would have thrown out the smell of arsenic. From that examination and my subsequent ones, as a mineralogist and man of science, have no doubt of the presence of the odor of arsenic, and, of course, of arsenic. As a chemist in ordinary investigations, am warranted in relying on the odor as a test of the presence of arsenic. A ring without the odor would not satisfy me, and of the two, if I must judge by one, should most depend on the odor, but only then for ordinary purposes; consider the black shining ring as additional evidence; it was distinguished from the ring of cinnibar by the

absence of the smell of sulphur. Alone, however, I could not confide in it, as it is a new point, on which there is no good authority. Writers have ascribed it to charcoal, but charcoal cannot produce it. Of the liquid tests sulphuretted hydrogen afforded a characteristic precipitate, which might have been sulphur, but was more probably a mixture of animal matter and a trace of arsenic. As part of the series, it is of some import. As a chemist, and for all ordinary purposes, I should not feel warranted in rejecting the train of chemical evi-

dence in favor of the presence of arsenic, but cannot entirely divest myself of the influence, which the weight of authority, and the importance of the consequences naturally exert. Without the odor, even a crust would not have satisfied me. Confined to one single test, I would prefer the odor. The black lustrous ring was additional evidence; for as it did not give a sulphureous, but an arsenical smell, it could not be cinnabar; should not feel justified in rejecting the train of chemical evidence.

Mr. McDowell briefly opened the case for the *Prisoner*. The only evidence given was the deposition of *Dr. Baché*¹¹ and the verdict of acquittal in the case of *Mrs. Chapman*.¹²

Messrs. Reed, McDowell, Rush and *Ross* addressed the jury. in the order in which they are named.

April 27.

JUDGE FOX charged the jury, after which they were placed in the custody of two constables, to be kept without meat, etc., until they were agreed upon their verdict. In less than three hours (it being about half-past nine o'clock in the evening), the jury returned into court with a verdict of *Guilty of Murder in the First Degree*, on the first and second counts of the indictment, and *Not Guilty*, on the third count.

April 28.

Mr. McDowell requested the COURT to allow the counsel time to file reasons in arrest of judgment, if they should find it advisable to do so; and mentioned the time of four days, as the customary allowance. The COURT acceded.

May 1.

Mr. Rush presented an application for a new trial, which was argued by him but overruled by the COURT without calling upon the Counsel for the Commonwealth.

Previously to entering upon the argument, *Mr. Rush* asked if it

¹¹ See *ante*, p. 177.

¹² See *ante*, p. 396.

would be necessary that the prisoner should be present pending the discussion.

The COURT said it had been settled that there was no such necessity, if the counsel for the prisoner were willing to argue the motion in his absence.

Mr. Ross moved that the prisoner now be brought up for sentence. He was accordingly brought into court (about half-past eleven) and asked if he had anything to say why sentence of death should not be passed upon him.

Mr. McDowell said that the counsel had nothing further to say, but that the prisoner himself had drawn up a paper, which they thought it best to read in his own words. It was as follows:

“Before the court shall proceed to pass upon me the sentence of the law, I wish to say a few words to them. My name is Carolino. I was born on the 20th of December, 1809, in the city of Trinidad, in the island of Cuba, where my parents now reside. I was baptized in the Roman Catholic Church, and desire to die in its faith. I pray that a priest of that religion may be sent to me, that I may prepare myself for death, by confession, and the blessed absolution, and by partaking of the holy communion according to the rites and ceremonies of that church. I have written to my father and brother, and expect they will come to this country to see me; and I have, in the island of Cuba, a daughter four years old. It is necessary before I die that I should execute some legal papers, in order to secure some property to my daughter. I therefore pray the court to grant me at least a few months of existence before I am ordered to be executed.”

JUDGE FOX: These matters will be laid before the governor, who will no doubt grant the request which you make. Lino Amalia Espos y Mina, the sentence which the law imposes upon you is, that you be taken hence to the prison of Bucks County, from whence you came, and from thence to the place of execution; and that you be there hanged by the neck until you are dead. And may God have mercy upon your soul.

THE CONFESSION.

During Mina's imprisonment in the Bucks County jail he wrote in Spanish a lengthy account of his life which he delivered to the Sheriff with a request that it be printed, and it was published in English by two different printers the day after he was hanged. It stated that his name was Carolino Estradas de Mina and that he was born on the Island of Cuba in 1809, where his father was commandant. He came to the United States in 1829 and having been accused of stealing some jewelry was imprisoned for fourteen months. On his release he started for Philadelphia, and on his way came to Mr. Chapman's house. Mrs. Chapman he said soon fell in love with him and poisoned her husband in order to marry him. He declared solemnly that he had no hand in the crime, and that after their marriage she confessed her guilt to him, whereupon he left her. The confession (which is written in the third person) says: "During the same day Carolino led Mrs. C. into his chamber, and having locked the door, he threatened to stab her if she did not reveal the whole truth respecting the mysterious death of her husband, at the same time promising her that if she made a full confession, he would not harm her and would bind himself by the word of a gentleman to keep the whole an inviolable secret. She then confessed, that in order to marry him she had murdered her former husband; that she knew Carolino to be rich, and that when she would be married to him he would take her to live with his parents; that another motive for killing him was the fear that he would kill her through jealousy of Carolino. She had purchased the phial of poison from a doctor in the vicinity, and had given him one hundred dollars for it, and a promise of secrecy on his part as to having sold it. The directions were to give three drops per day, but she, fearing that Carolino should discover her husband to be jealous of him, and that his sentiments of honor should then induce him to leave her house, gave him ten drops per day instead of three—that the doctor had also told her this portion could only be administered in beer, and that it was in this beverage that she daily mixed the ingredient that was to rob her husband of his life; that she had been driven to this awful step, not merely for the jealousy he evinced shortly before his decease, and the miserable life he caused her to lead, but principally to marry Carolino."

After his conviction he made an attempt to escape from the county prison, and succeeded in gaining the woods but was pursued and brought back to prison where he was loaded with irons to secure him.

THE EXECUTION.

June 21.

Today Mina was executed at Doylestown. His confession, published the next day, added the following account of it:

Carolino or Mina was hung yesterday, pursuant to his sentence, at 20 minutes before 12 o'clock. The execution took place two miles from Doylestown, on the poor house ground; it is computed that at

least 10,000 people were present, and we are pleased to state there were not more than 100 females in this vast concourse. The culprit was taken from the prison at half past 9 o'clock in the morning, and rode to the place of execution in an open dearborne, in company with the Sheriff and a Catholic priest of this city. The civil authorities of the village preceded the dearborne, and immediately after it, about twenty persons, assistants and friends of the Sheriff. After these, several troops of horses, and several companies of infantry, from the surrounding neighborhood, followed.

Our informant visited Mina in prison at a late hour on Wednesday evening as well as on Thursday morning. On both occasions, the culprit conversed lightly and freely, on various subjects, and exhibited no symptoms of penitence till the clock struck nine (the hour fixed for his departure from prison), when he raised his hands to Heaven, and exclaimed, "Oh my God! the hour is arrived!" And from that time until the moment of his execution, he appeared thoroughly given to reflections concerning his dreadful fate, and held constant communion with the priest. He knelt on the scaffold beneath the gallows, and prayed with apparent sincerity for several minutes. He protested to the last that he was innocent of the crime for which he was about to suffer, and immediately before his exit into eternity, he made a short speech in Spanish, which was translated by the clergyman. The substance of it was as follows:

"Americans! you see before you an innocent victim—I have not to my knowledge wronged any person! if I have, however, I sincerely hope they will forgive me, as I forgive all those who have ever wronged me: You thirst for my blood! You think I am a coward! I will show you that I will die like a man—Innocent Mina!—Poor Mina is innocent!"

We regret to say that his death struggle was protracted for upwards of ten minutes, there not being sufficient length of rope allowed for the fall to break his neck immediately. The poor wretch struggled convulsively for a long time, and endeavored apparently in every possible way to put an end to his mortal agony. There appeared to be not the slightest sympathy shown in any bosom for the sufferer, and so strong was the excitement against Mrs. Chapman, that had she appeared upon the ground, it was the opinion of many that she would immediately have been put to death.

The conduct of the sheriff throughout was such as to have produced general satisfaction. He performed all the unpleasant duties of hangman, etc., with his own hands.

On Tuesday night last, we understand that Mina attempted to commit suicide. Having found a rusty nail in one portion of his cell, he ground it to a sharp point on the stones, and penetrated one of the veins in his left arm, by which a great quantity of blood was emitted. After having been detected in the attempt, and the wound bound up, he swallowed a large quantity of broken glass, but without having the desired effect. On being questioned with regard to

these attempts, he said that his object was not to commit suicide, but to weaken himself by blood-letting, in order that his death by violence might be rendered easier.

Throughout the revolting ceremony not the slightest disturbance took place among the spectators, and an involuntary shudder passed through the bosoms of all as the murderer was precipitated into eternity.

THE TRIAL OF MAJOR GENERAL BENEDICT ARNOLD FOR CERTAIN MISDEMEANORS, RARITAN, NEW JERSEY, 1779.

THE NARRATIVE.

When in June, 1778, the British troops evacuated Philadelphia, Major General Benedict Arnold¹ was appointed by Washington to take command of that city. His task was not an easy one as the enemy had been in possession for nearly a year and many of the leading citizens were of doubtful patriotism and inclined to the interests of the King of England. And much of the property belonged to this class of the inhabitants or its ownership was doubtful, thus affording a great opportunity for graft and fraud. One of his first acts was to issue a proc-

¹ ARNOLD, BENEDICT. (1741-1801.) Born Norwich, Conn. After some years as an apothecary apprentice, he removed in 1763 to New Haven, where he carried on a drug business combined with book selling. At the beginning of the Revolution he was captain of a company at New Haven, which he took to Massachusetts after the battle of Lexington. He went on the expedition against Fort Ticonderoga and promoted to Colonel, he sailed down Lake Champlain and captured St. Johns. He proposed to Washington an expedition against Quebec, and was sent there in command of it. He captured Montreal and was made a General, but was unsuccessful and Canada was abandoned. In 1777 Arnold took a conspicuous part with General Gates, which resulted in the surrender of Burgoyne's army. (See 3 Am. St. Tr. 806.) On account of wounds he left the active service and was appointed Commander of Philadelphia. There he quarreled with the civil authorities, which resulted in his court martial, after which he began his correspondence with the British, and the plot to surrender West Point. This was discovered by the capture of Major André (*post*, p. 464), but he escaped to the British lines and as the price of his treason was paid a large sum of money and made a Brigadier General in the British army. He led a force against his countrymen and destroyed much property and captured several forts. At the end of the war he went to England, where he lived twenty years, but went to St. John, New Brunswick for a time, where he engaged in business. He became very unpopular there and was hung in effigy. He returned to England, and when the war with France began he petitioned for a command, but as no officers would serve or associate with him, it was refused. He died in London, aged 61.

lamation prohibiting the sale of goods until a commission should decide whether any part belonged to the King or his subjects. Though this measure had been ordered by Congress it was extremely unpopular in Philadelphia and caused a prejudice and dislike which turned public opinion strongly against him.

There was nothing in the character of General Arnold to conciliate the favor of the masses when once lost, and the luster of his military fame, as the fighting general, was soon obscured by a course of official and private conduct, which betrayed the speculator, and the weak, vain, and ambitious man. To add to this was the fact that his associations in the city were largely among those who secretly hoped for the success of the royal cause.

The habits of General Arnold while holding chief military command in Philadelphia, were extravagant to a degree far beyond his income. He indulged in an expensive equipage, a sumptuous table, and costly livery, and he became involved in debt, from which he undertook to extricate himself by private speculations, which were unfortunate. He took shares in privateers, and was unlucky. He presented claims against the United States, for expenses incurred in his northern campaigns, which were disallowed by the commissioners appointed to audit them. He quarreled with members of Congress who happened to oppose his claims, and he was continually alluding to his wounds, his scars, and his services, as a reason why his pretensions should be regarded and his demands allowed.

At the end of seven months his difficulties with the President and Council of Pennsylvania had drawn from that body a severe public censure upon his conduct, which was followed by a direction to the Attorney General to prosecute him for "such illegal and oppressive acts as were cognizable in courts of law," and the Council enumerated eight distinct charges against him. These were: 1. Giving protection to a vessel owned by a disloyal person to leave Philadelphia, proceed to sea and enter any port of the United States. 2. Closing up the shops in Philadelphia on his taking command so that even

officers of the army could not purchase, while privately making purchases for his own benefit and profit. 3. Imposing menial offices on militia men, and declaring that when a citizen became a soldier he must obey every order of a superior without questioning it. 4. Preventing the decision of a prize case by purchasing the vessel himself at a low and inadequate price. 5. Appropriating State wagons to transport private property and disloyal persons. 6. When Congress had given to the Executive of each state the sole power to recommend persons who should be allowed to go within the enemy's line, he (General Arnold) attempted to make said recommendations himself. 7. When he was questioned as to the excessive use of public wagons he gave to the civil authorities "an indecent and disrespectful refusal of any satisfaction whatever." 8. His neglect and discouragement of loyal persons both military and civil and his different conduct towards disloyal persons.

These complaints were also presented to Congress, which referred them to a Commission of Inquiry, but, through some misunderstanding, the Council did not furnish the necessary testimony, and the Commission acquitted General Arnold of criminality in the matter charged against him. Congress did not act on the report, but after a long delay with the consent of the Council decided that the matter should be sent to a military tribunal.

Arnold had resigned his command at Philadelphia but continued to reside there, holding his commission in the army but filling no public office. His disagreeable manners and the unpopularity of his character rendered him odious to the inhabitants and one day he was assaulted in the streets by the populace.

It was not until the last month of 1779 that the Court Martial appointed by Washington, assembled at Raritan, New Jersey, and the trial began. Arnold's defense was studied, elaborate and characteristic. He took up one by one the eight charges of the Pennsylvania Council, although only four of them had been referred to the Court, and attempted to refute them in detail. On some he was successful but he weakened

the force of his arguments and diminished the value of his facts by making a parade of his patriotism, his service, his sacrifice and his wounds and by enumerating his wrongs real and imaginary. He read letters from Washington and resolutions of Congress to show that his conduct as a soldier had always been approved and applauded, aiming in this way to draw the attention of the Court from the real merits of the case.²

The Court took time to consider the testimony and decided apparently without bias or passion. Of the second and third charges he was wholly acquitted. The two others; that relating to the giving protection to the ship of a royalist and that charging him with employing the public wagons of Pennsylvania for the transportation of private property were sustained, but not so far as to imply a criminal intention. The Court was of the opinion, however, that considering the high station in which General Arnold acted at the time, and the effect of his conduct under the circumstances in which he was placed, these transactions were imprudent and improper. On this ground and with reference to these two charges only the Court sentenced him to be reprimanded by the Commander in Chief. And Washington in performing the duty imposed on him as the head of the army exercised all the delicacy which he thought due to an officer of high rank and bravery, and which was likewise conformable to his own character and feelings.³

THE TRIAL.^{3a}

Before a Court of Military Officers, Raritan, New Jersey, December, 1779.

MAJOR GENERAL HOWE,⁴ *President.*

BRIGADIER GENERALS SMALLWOOD,⁵ KNOX,⁶ WOODFORD,⁷ IRVINE.⁸ STARK,⁹ MAXWELL,¹⁰ GIST,¹¹

² Sparks, Benedict Arnold, 138.

³ Sparks, Benedict Arnold, 141-144.

^{3a} *Bibliography.* The proceedings of the court martial upon the case of General Arnold were confirmed by Congress on the 12th of

COLONELS MOYLAN, WOOD, HARRISON, HALL, GUNBY, BUTLER, VAN CORTLANDT,¹² DAYTON,¹³ BRADLEY,¹⁴ HAMPTON,¹⁵ HAZEN.¹⁶

LIEUTENANT COLONELS HARMAR, SIMS, POPKINS, SHERBURN,¹⁷ JACKSON,^{17a} SPENCER,¹⁸ WEISENFELDT.^{18a}

December 22.

On May 29th the Commander in Chief (General Washington) issued an order directing a General Court Martial to be held on June 1st, for the trial of Major General Arnold as

February, 1780, and on the 15th, it was ordered that fifty copies be printed.

*"Proceedings of a General Court Martial of the Line, held at Raritan, in the State of New Jersey, by order of His Excellency George Washington, Esq., General and Commander in Chief of the Army of the United States of America, for the Trial of Major General Arnold, June 1, 1779, Major General Howe, president. Published by order of Congress. Philadelphia: Printed by Francis Bailey, in Market Street. MDCCLXXX."

**"Proceedings of a General Court Martial for the trial of Major General Arnold, with an Introduction, Notes and Index. New York: Privately printed. 1865." This volume, of which only 75 copies were printed, was from the original edition of 1780, printed by Francis Bailey, and was reproduced without change or addition, excepting by way of introduction and notes.

⁴HOWE, ROBERT. (1732-1785.) Born and died in Brunswick County, N. C. Became Colonel of the First North Carolina Regiment and went early into and served with distinction in the Revolutionary war. Became Brigadier General and was in command at the Battle of Savannah.

⁵SMALLWOOD, WILLIAM. (1732-1792.) Born Kent County, Maryland. In 1776 was made Brigadier General for services in the Revolutionary war and was promoted to be Major General in 1780. In 1785 was elected to the Continental Congress from Maryland and Governor of the State. Died in Prince George County, Md.

⁶KNOX, HENRY. (1750-1806.) Born in Boston. Was Captain of Militia before the Revolutionary war. Served in the French and Indian wars, and was at Bunker Hill. Promoted to Brigadier General, 1777; Major General, 1785; Secretary of War, 1785-1789-1795; was the second Commander of the United States Army. Died in Thomaston, Maine.

⁷WOODFORD, WILLIAM. (1735-1780.) Born in Carolina County, Virginia. Appointed Brigadier General, United States Army, 1777 and was distinguished in the French and Indian wars. In 1775, was appointed Colonel of the Second Virginia Regiment. He served in the battle of Great Bridge in December, 1775; at Brandywine

directed by a resolution of Congress of April 3, 1779. The meeting of the Court on June 2nd was deferred until today, when it assembled at Norris' Tavern.

(where he was wounded), and at Monmouth. Was taken prisoner at Charleston during the siege of 1780, and died in the hands of the enemy at New York City.

⁸ IRVINE, WILLIAM. (1741-1804.) Born in Ireland and served for some time as surgeon on a British war ship. In 1763 emigrated to Pennsylvania and became Colonel of a Pennsylvania regiment. In 1781 the defense of the Northwestern frontier was entrusted to him and he attained the rank of Major General. Delegate from Pennsylvania to Continental Congress, 1786-1788. Member of Third United States Congress, 1793-1795. Removed to Philadelphia and became Superintendent of Military Stores. Died in Philadelphia.

⁹ STARK, JOHN. (1728-1832.) Born Londonderry, N. H. Known to history as the victor over the British at Bennington, Vermont, Aug. 16, 1777. Died in Manchester, N. H. He was appointed to the Court Martial on December 19, in the place of General Irvine, who had been challenged.

¹⁰ MAXWELL, WILLIAM. Born in Ireland. Represented Sussex County in the New Jersey Provincial Congress. First Colonel of a New Jersey regiment, he became Brigadier General in 1776. Died in Sussex County, N. J. He was appointed to the Court Martial on December 19, in the place of General Woodford who was absent.

¹¹ GIST, MORDECAI. (1743-1792.) Born Baltimore, Md. Served through the Revolutionary war. Became Brigadier General. Distinguished himself at the Battle of Camden, S. C., and was present at the surrender of Cornwallis. After the war he purchased a plantation near Charleston, S. C., and resided there until his death. He was appointed to the Court Martial on December 21, in the place of General Smallwood, who was called away.

¹² COL. PHILIP VAN CORTLANDT was made a member on December 19, vice Col. Stephen Moylan, absent. He entered the revolution at an early period, and served through the war. In 1793 he entered Congress and remained sixteen years. Died 1831, aged 82.

¹³ COL. ELIAS DAYTON was made a member on December 19, vice Col. Popkins, absent.

¹⁴ COL. STEPHEN BRADLEY was made a member on December 19, vice Col. Joseph Wood, absent.

¹⁵ COL. RICHARD HAMPTON was made a member on December 19, vice Col. Charles Harrison, absent.

¹⁶ COL. MOSES HAZEN of the New York Line was made a member on December 19, vice Col. R. Butler, challenged. He had raised a regiment of Canadians in the expedition to Canada; and while on the service had been personally associated with General Arnold.

¹⁷ COL. SHERBURNE was made a member on December 17, vice Col. Josiah Harmar who had been challenged.

John Lawrence,¹⁹ Judge Advocate.

The *Judge Advocate* read the orders of the Commander in Chief and the names of the officers of the Court.

General Arnold objected to General Irvine, Colonel Butler and Lieutenant Colonel Harmar, which objection was allowed by the Court.²⁰

The members of the Court were sworn according to the rules and articles of war.

The *Judge Advocate* produced the proceedings of the council of the state of Pennsylvania, relative to Major General Arnold, dated February 3, 1779, and a resolution of the Congress, dated April 3, 1779; which was read, as follows:

IN COUNCIL.

Philadelphia, February 3, 1779.

Present,

His Excellency Joseph Reed,²¹ Esq., President.

The Honorable George Bryan,²² Esq., Vice-President.

Colonel Joseph Hart,

John Macky,

James M'Kene,

James Read,²³

John Hambright, and

Thomas Scott, Esquires.

^{17a} COL. JACKSON was appointed a member on December 22, vice Col. Hazen.

¹⁸ COL. OLIVER SPENCER was made a member on December 21, vice General Stark, who was ill.

^{18a} COL. WEISENFELDT was appointed a member on December 22, vice Col. Hampton.

¹⁹ LAWRENCE, JOHN. (1750-1820.) Born Cornwall, England; came to America in 1767; admitted to Bar, 1775; entered the army, 1776. Served throughout the Revolutionary War; was Judge Advocate on General Washington's staff and on the Court Martial which tried Major André. Delegate to Continental Congress, 1785-1787. Member of New York Senate, 1789. Representative in Congress, 1789-1793. Judge, United States Circuit Court. United States Senator, 1796-1800. Died in New York City.

²⁰ The officers challenged were citizens of Pennsylvania, which may have been the reason.

²¹ REED, JOSEPH. (1741-1785.) Born Trenton, N. J. Graduated Princeton, 1757, and began practice of law in his native place. Took an active part in the Revolution and was President of the Pennsyl-

This board having maturely considered the general tenor and course of the military command exercised by Major General Arnold in this city and state, and divers transactions which have appeared to this board during his command, do resolve unanimously,

First. That the same hath been in many respects oppressive to the faithful subjects of the state, unworthy of his rank and station, highly discouraging to those who have manifested their attachment to the liberties and interest of America and disrespectful to the supreme executive authority of the state.

Wherefore, resolved unanimously,

vania Convention. Was aide-camp-secretary to General Washington. Delegate from Pennsylvania to the Continental Congress, 1777, and President of Pennsylvania, 1778-1781. In 1784 he made a voyage to England, chiefly for the restoration of his health, but returned in nine months but little benefited. He was elected to Congress from Pennsylvania after his return, but was unable to take his seat, and died in Philadelphia the next year.

²² MR. BRYAN emigrated from Dublin, Ireland, 'at an early age; engaged extensively in commercial business, but was finally unsuccessful. He was active and public spirited; was chosen a delegate to the Congress of 1765, and after the Declaration of Independence, was chosen vice-president of the Supreme Executive Council of Pennsylvania. In 1779, upon the state constitution going into effect, he was elected a member of the legislature, in which he planned and advocated a law for the gradual abolition of slavery. In 1780, he was appointed a judge of the Supreme Court, and held this office till his death, which occurred January 28, 1791, at the age of sixty years. His associates in the council were all prominent and influential citizens.

²³ COL. JAMES REED was a native of Delaware, but removed to Philadelphia in early life and took a prominent part in the war of the Revolution. In 1775 he was appointed Paymaster of the fleet. In 1775 he became Lieutenant in a Philadelphia regiment, and was with General Washington when he crossed the Delaware on Christmas night, 1776, and within a short time, participated with his company in the last bayonet charge at the battle of Princeton. In June, 1777, he became Major of the 1st battalion of Philadelphia city militia, and was present at the battle of Brandywine in September. Soon afterwards he was appointed Brigadier Major on the staff of Gen. Irwin, and held that position at the battle of Germantown. In 1779, Major Read was made Lieutenant Colonel Commandant of a Philadelphia regiment, and resigned as paymaster of the navy. In the same year Congress appointed him a commissioner of the Navy Board. He was for several years a member of the select council of Philadelphia, and during the war of 1812, was one of the committee to provide for the defense of the river Delaware. He was also for a long time, member of the supreme executive council of Pennsylvania. He died at Philadelphia in 1822, aged 79.

Second, That nothing but the most urgent and pressing necessity can justify or induce this board to call forth any wagons or militia, or otherwise subject the good people of this state to the power and command of the said General Arnold within the state, should he resume it upon his return.

Third, Ordered, That the Attorney General do prosecute the said General Arnold for such illegal and oppressive conduct as is cognizable in the courts of law.

And, that this board may not be supposed capable of passing the above resolves upon mere general grounds, and more especially in the case of one who has formerly distinguished himself in public service, they think proper to declare that the consideration last mentioned has hitherto restrained them from taking proper notice of General Arnold, hoping that every unworthy transaction would be the last, or that a becoming sense of such improprieties would effect an alteration of conduct. But finding that tenderness has only led to insult and farther oppression, duty to the state, regard to the interest and happiness of the good people thereof, who must be affected by all abuses of power, oblige us thus to take notice thereof; and farther declare, that the said resolves are founded upon the following articles, in which they have sufficient ground to esteem General Arnold culpable.

First, That while in the camp of General Washington at Valley Forge, last spring, he gave permission to a vessel belonging to persons then voluntarily residing in this city with the enemy, and of disaffected character, to come into a port of the United States, without the knowledge of the authority of the state, or of the commander in chief, though then present.

Second, In having shut up the shops and stores on his arrival in the city, so as even to prevent officers of the army from purchasing, while he privately made considerable purchases for his own benefit, as is alleged and believed.

Third, In imposing menial offices upon the sons of freemen of this state, when called forth by the desire of congress to perform militia duty; and when remonstrated to hereupon, justifying himself in writing, upon the ground of having power so to do; for that, "when a citizen assumed the character of a soldier, the former was entirely lost in the latter; and that it was the duty of the militia to obey every order of his aids (not a breach of the laws and constitution) as his (the general's) without judging of the propriety of them."

Fourth, For that, when a prize was brought into this port by the Convention brig of this state, whereupon a dispute arose respecting the capture, which would otherwise in great probability have been amicably adjusted between the claimants, General Arnold interposed by an illegal and unworthy purchase of the suit, at a low and inadequate price, as has been publicly charged by a reputable citizen; to which may in some degree be ascribed the delay of justice in the courts of appeal, and the dispute in which the state may probably be involved with congress hereupon.

Fifth, The appropriating the wagons of this state when called forth upon a special emergency last autumn, to the transportation of private property, and that of persons who voluntarily remained with the enemy last winter, and were deemed disaffected to the interests and independence of America.

Sixth, In that, Congress by a resolve of the twenty-first of August last, having given to the executive power of every state, an exclusive power to recommend persons desirous of going within the enemy's lines, to the officer there commanding, General Arnold, in order, as may reasonably be inferred, to elude the said resolve, wrote a letter, as appears by comparison of hands and the declaration of the intended bearer, commendatory for the above purpose, and caused his aide-de-camp, Major Clarkson, to sign the same. But the said device not taking effect, through the vigilance of the officers at Elizabethtown, General Arnold, without disclosing any of the above circumstances, applied to council for their permission, which was instantly refused, the connection, character and situation of the party being well known and deemed utterly improper to be indulged with such permission, thereby violating the resolve of Congress, and usurping the authority of this board.

Seventh, This board having, upon the complaint of several inhabitants of Chester County, through the late wagon master general, requested of the said General Arnold to state the said transaction respecting the wagons, in order that they might satisfy the complainants, or explain the same without further trouble, received in return an indecent and disrespectful refusal of any satisfaction whatsoever.

Eighth, The discouragement and neglect manifested by General Arnold, during his command, to civil, military and other characters, who have adhered to the cause of the country—with an entire different conduct towards those of another character, are too notorious to need proof or illustration. And if this command has been, as is generally believed, supported at an expense of four or five thousand pounds per annum to the United States, we freely declare we shall very unwillingly pay any share of expenses thus incurred.

Extract from the minutes,

T. Matlack, Secretary.

IN CONGRESS.

April 3, 1779.

Resolved, That His Excellency Joseph Reed's letter to Congress of the 25th January, 1779, and General Arnold's letter of 8th and 12th February, and the resolves therein contained of the executive council of Pennsylvania, be, with the evidence which has been collected and reported by the committee on those letters, transmitted to the commander in chief: and that he be directed to appoint a court martial on the first, second, third and fifth articles contained in the said resolves of the said executive council, the said articles only being cognizable by a court martial; and that the reference be notified

by the supreme executive council, and they be requested to furnish the evidence to the court martial.

Major General Arnold asked that the proceedings of the council of the state of Pennsylvania, dated January 18 and 21, 1779, and His Excellency President Reed's letter to the honorable the Congress, dated January 25, 1779, might be produced. *The Judge Advocate*, at the desire of the court, produced them, which being read, are as follows:

IN COUNCIL.

Philadelphia, January 18, 1779.

A representation having been made by Colonel Andrew Boyd, wagon master of the County of Chester, through James Young, Esq., wagon master general, to this board, that Jesse Jordan, a deputy wagon master, was sent by Colonel Boyd, with a brigade of twelve wagons, to Philadelphia, under the wagon law of this state, to convey provisions from thence to New Windsor, in consequence of orders from him (the wagon master general) of the 27th September last; and that, when the said Jordan returned home, he informed Colonel Boyd, that when he arrived in Philadelphia with his brigade he applied to John Mitchell, Esq., deputy quarter master general, for loading, who sent him with his brigade to Eggharbor without loading, with orders to load merchandise there of private property, and return with it to Philadelphia, which he did; that the loading was delivered there into private stores. On consideration,

Ordered, That Mr. Mitchell be requested to state to council, in writing, the transaction relating to Jordan's brigade of wagons, sent by him to Eggharbor, ascertaining the property, or to whom the same was delivered.

Extract from the minutes,

T. Matlack, Secretary.

Quartermaster general's office,
Philadelphia, January 19, 1779.

Sir,

I this day received an order, signed by the secretary of the honorable council of this state, requesting I would give them information respecting a brigade of wagons under the conduct of Jesse Jordan, a wagon master from Chester County, the council having been informed that I sent them to Eggharbor, to convey private property to this city. I shall at all times be ready to give your excellency and the honorable council every information you think necessary for the good of the public, or this state in particular, which relates to my office, or the business of the department, as I have no desire to con-

ceal any part of my conduct as a public officer, having conducted the business under my direction with integrity, and justice to the public. The following are the state of facts required, viz.:

In the month of October last, at the time the enemy had landed some troops at Eggharbor, General Arnold desired I would furnish him with a brigade of teams, which he wanted to send to the Jerseys, and, that he would pay the hire of them, they being wanted to remove property which was in imminent danger of falling into the hands of the enemy. I informed him, he should have the wagon master of the first brigade which could be spared from public service, sent to him, when he would give such orders as he pleased. Accordingly, about the 22d of October, Mr. Jordan was sent to the general, to receive his directions, having at that time sent forward a large supply for the army, etc. When Jordan returned, he was desired to make out his account to General Arnold, to be paid. I do not know where the loading was stored, nor whose property it was, further than what is before mentioned. A greater number of continental teams coming in than I expected, enabled me to comply with General Arnold's request, without any inconvenience to the service. If there is anything further, in which I can satisfy your excellency and the council, I will wait on you at any time with pleasure.

I have the honor to be, with great respect

Your excellency's most obedient

And most humble servant,

John Mitchell, D. Q. M. G.

His Excellency Joseph Reed, Esq., President of the State of Pennsylvania.

Copy.

T. Matlack, Secretary.

IN COUNCIL.

Philadelphia, January 21, 1779.

Council having received from John Mitchell, Esq., deputy quartermaster general, a state of the transaction, in pursuance of the resolve of council of the 18th instant, by which it appears he acted therein in consequence of orders from Major General Arnold.

Ordered, That the secretary make out a copy of said minute, with Mr. Mitchell's state, and transmit them to Major General Arnold, requesting him to inform this board whether the property for which the said wagons were ordered, was public or private. If the latter, to whom the same belonged; and farther to inform this board by virtue of what resolve of Congress, or other authority, public wagons of this state were sent into another state, to do business merely of a private nature.

Ordered, Also. That the quartermaster general be desired to order Jesse Jordan, a wagon master in his employ, to attend this board, to

satisfy them with respect to the employ of the public wagons of this state, in September last.

Extract from the minutes,

T. Matlack, Secretary.

Philadelphia, January 25, 1779.

Gentlemen,

I received a letter from Mr. Timothy Matlack, your secretary, of the 22d instant, enclosing an order of council of the 18th, Colonel Mitchell's answer of the 19th, and a subsequent order of council of the 21st instant.

I think it very extraordinary, that after Colonel Mitchell had, by his letter of the 19th, so fully and clearly answered the requisition of council in their order of the 18th, they should have passed the order of the 21st. In answer I shall only say, that I am at all times ready to answer my public conduct to Congress or General Washington, to whom alone I am accountable.

I am, Gentlemen,

Your most humble servant,
B. Arnold.

To the President and Council of the State of Pennsylvania.

Copy.

T. Matlack, Secretary.

IN COUNCIL.

Philadelphia, January 25, 1779.

Sir,

This board, which by its duty and station is bound to protect the rights and interests of the good people of this state, having received a complaint from Mr. Andrew Boyd, in behalf of himself and others, that the public wagons of the state, when called forth under the wagon law, have been employed in the transportation of private property, requested of John Mitchell, Esq., D. Q. M. G., the reasons of such conduct. Mr. Mitchell, admitting the fact, alleged in justification, that the wagons had been so employed by the direction of General Arnold, then the military commanding officer of this state. This board having thereupon transmitted to General Arnold a copy of their proceedings, with Mr. Mitchell's answer, and requested General Arnold to give us a state of the transaction, he this day returned for answer, "That he was at all times ready to answer for his public conduct to Congress or General Washington, to whom alone he was accountable."

The indignity offered to us upon this occasion, as well as a due regard to the violated rights of the freemen of this state, calls upon us to resent such treatment, and in their names we shall call upon the delegates of the United States for justice, and reparation of our authority, thus wounded by one of their officers. But as we learn

that Gen. Arnold is about to depart this city for some time, and may thereby elude inquiry into this transaction, as well as some others under our consideration, we request he may be detained till the whole proceedings can be laid before you in form, and that he forbear exercising any further command in this city, until the charges against him are examined.

I am, Sir,

Your obedient humble servant,

Jos. Reed, President.

Honorable John Jay, Esq., President of Congress.

The *Judge Advocate* exhibited as charges against *Major General Arnold*, the first, second, third, and fifth articles contained in the proceedings of the council of the state of Pennsylvania.

General Arnold pleaded *not guilty*.

In support of the first charge, the *Judge Advocate* produced a protection given by Major General Arnold, to Captain Robert Shewell, Junior, and others, for the schooner *Charming Nancy*, dated, camp, Valley Forge, June 4, 1778, which being read, is as follows:

Whereas, Capt. Robert Shewell, Junior, a merchant of the city of Philadelphia, in behalf of himself and company, has this day made information to me, that himself and company have a certain schooner called the *Charming Nancy*, New England built, about seventy-five tons burthen, now lying before the city of Philadelphia, which schooner William Moore is master, loaded with salt, linens, woolens, glass, loaf sugar and bohea tea, nails, etc., consigned to William Shirliff, supercargo on board; which property, they were of opinion, was not safe at Philadelphia, and as friends to their country, wished to have protection for said vessel and cargo, that the same might be brought into some port in the United States of America.

In full confidence of their upright intentions, I do hereby grant said Robert Shewell, Junior, and company, protection for said vessel and cargo. And said schooner is hereby permitted to sail into any of the ports of the United States of America, and all officers and soldiers of the continental army, and other persons, are hereby forbidden to give any umbrage or molestation to the said Captain Moore, or the said vessel and cargo.

Given under my hand, camp, Valley Forge, June 4, 1778.

B. Arnold, M. Gen.

Major General Arnold admitted that he gave the protection while in the camp of His Excellency General Washington at

Valley Forge, without the knowledge or the authority of the state of Pennsylvania, or the commander-in-chief, though then present.

THE WITNESSES.

*Timothy Matlack.*²⁴ Know the character of Captain Robert Shewell, Junior, at the time of that pass being given. He was generally reputed not to be well affected to the United States of America. He informed me that he was ordered to leave Gen. Washington's camp, in consequence of the character that had been given of him; and upon his appearing on parade afterwards, he was ordered to leave General Washington's camp on pain of imprisonment. He resided in Philadelphia. Do not know whether General Arnold knew his general character at the time he gave the permission, or whether General Arnold knew of Captain Shewell's being ordered to leave the camp of General Washington, previous to his having given him the permit. It was supposed Mr. Shirtliff was concerned in the vessel and several others, whose characters I know nothing of and cannot give; and it was supposed that General Arnold was concerned in the vessel or cargo.

To *General Arnold*. The conversation took its rise from Mr. Shewell's mentioning to me, that he was likely to be treated ill,

upon a charge of his having ill-treated Mr. Paul Fooks at the coffee house in Philadelphia, while the enemy had possession of the city. The reason he assigned to me, for his being ordered to leave General Washington's camp, was, he supposed he had been represented to General Washington as being unfriendly to America. Do not know that upon several alarms Captain Shewell turned out with the militia, and did duty with them; consider him at the time the protection was given, to be unfriendly to the United States of America.

December 24.

Timothy Matlack. Some time during the enemy's having possession of the city of Philadelphia, information was given to the board of war, that property belonging to Captain Robert Shewell, Jr., was arrived in Virginia, part of a vessel and cargo in which the Wykoffs, one or more of that family, was concerned. An order was issued for their being seized, as belonging to Captain Robert Shewell, Jr., who was deemed unfriendly to the United States of America. They were seized on that order,

²⁴ Mr. Matlack was prominent in the proceedings in this case. He had previously served in the army, and was conspicuous for his devotion to the revolutionary cause. Although belonging to the society of Friends in early life, he found no scruples in the way of taking arms in defense of his property and his liberty. He resided many years in Lancaster, Pa., and late in life was appointed prothonotary of one of the courts of Philadelphia. He died at Holmesborough, Pa., in 1829, aged 99.

and were detained: the length of time I cannot ascertain, nor do I know of their being delivered up to this day. This information I received from Mr. Shewell and from Mr. Isaac Wykoff. This order was issued by the board of war several months before Captain Robert Shewell, Junior, obtained the permission

of General Arnold. Do not know whether General Arnold knew of the board of war having issued the order. The board of war sat at the time at Yorktown. Do not know where General Arnold was at that time, further than it was a general knowledge that he was with the army at the northward.

In support of the second charge, the *Judge Advocate* produced His Excellency General Washington's instructions to Major General Arnold, dated June 18, 1778, a resolution of the honorable the Congress, dated June 5, 1778; and a copy of a proclamation issued by Major General Arnold, dated June 19, 1778; which being read, are as follows:.

To Major General Arnold.

Sir,

You are immediately to proceed to Philadelphia, and take command of the troops there. You will find the objects of your command specified in the enclosed copy of a resolution of Congress of the 5th instant. The means of executing the powers vested in you, I leave to your own judgment, not doubting that you will exercise them in the manner which shall be found most effectual, and, at the same time, most consistent with the rights of the citizens.

I have directed the quarter master general, commissary general and clothier general to send proper persons in their respective departments into the city, to take possession, for the use of the army, of all public stores left in the city by the enemy, which may not properly fall under the description of the enclosed resolve. In the execution of this duty, they will act under your directions and with your assistance.

Given at headquarters this 18th day of June, 1778.

G. Washington.

IN CONGRESS.

June 5, 1778.

Resolved, That, should the city of Philadelphia be evacuated by the enemy, it will be expedient and proper for the commander in chief to take effectual care that no insult, plunder or injury of any kind may be offered to the inhabitants of the said city. That, in order to prevent public or private injury, from the operations of ill disposed persons, the general be directed to take early and proper care to prevent the removal, transfer or sale of any goods, wares or merchandise in possession of the inhabitants of the said city, until the property of the same shall be ascertained by a joint committee, con-

sisting of persons appointed by Congress, and of persons appointed by the supreme executive council of the State of Pennsylvania; to-wit: so far as to determine whether any or what part thereof, may belong to the king of Great Britain, or to any of his subjects.

Extract from the minutes,

Charles Thomson,²⁵ Secretary.

By the Honorable Major General Arnold, Commander in chief of the forces of the United States of America, in the city of Philadelphia, etc.

A Proclamation.

In order to protect the persons and property of the inhabitants of this city from insult and injury, to secure the public and private stores which the enemy may have left in the city, and to prevent the disorder and confusion naturally arising from want of government,

His Excellency General Washington, in compliance with the following resolution of Congress, has thought proper to establish military law in this city and suburbs, until the civil authority of the state can resume the government thereof.

(Here the above resolution was recited.)

In order the more effectually to carry into execution the above resolve, all persons having European, East or West India goods, iron, leather, shoes, wines and provisions of every kind, beyond the necessary use of a private family, are ordered to make return of the same to the town major, by twelve o'clock tomorrow, specifying the quantity, and, as nearly as they can judge, the amount of the same, in order that the quartermaster, commissary and clothier generals may contract for such goods as are wanted for the use of the army, and until permission is given by the general, there be no removal, transfer or sale of any goods, as it will be deemed a breach of the above resolution of Congress, and such goods will be seized and confiscated for the public use.

All persons having in their hands public stores or effects the property of the subjects of the king of Great Britain or their adherents, who have departed with them, are to make a like report by Monday noon next, under penalty of the confiscation of their own effects, and any persons discovering such concealed stores or effects will be suitably rewarded.

²⁵ MR. THOMSON was born in Ireland in 1730, settled in Philadelphia as a teacher, and there formed an intimate acquaintance with Dr. Franklin, which probably led to his being selected as the secretary of the first Congress. He discharged the duties of this office with great credit to himself, and usefulness to the public, during the whole period of our government, until the adoption of the constitution. He died at Lower Merion, Pa., in 1824, aged 94.

Any persons harboring or concealing any officer, soldier or other person belonging to the enemy, or any deserter from the continental army, will be severely punished, unless they make immediate discovery to some officer of the said army.

Given at headquarters, in the city of Philadelphia, June 19, 1778.

B. Arnold, Major Gen.

By his honor's command.

David S. Franks,²⁶ Secretary.

Major General Arnold admitted, that on his arrival in Philadelphia, the shops were shut by his orders, and the officers of the army in consequence of them, prevented from purchasing.

The *Judge Advocate* then produced the deposition of Colonel John Fitzgerald, dated May 7, 1779, which was as follows:

Colonel Fitzgerald. Was late aide-de-camp to General Washington. On the evening of the day the British forces left Philadelphia, I and Major David S. Franks, aide-de-camp to Major General Arnold, went to the house of Miss Brackenberry and lodged there that night; next morning Major Franks having gone down stairs, I went into the front room of the said house, to view Colonel Jackson's regiment then marching into the city, saw lying in the window two open papers; on casting my eye on one of them, was surprised to find it contained instructions to Major Franks to purchase European and East India goods in the city of Philadelphia, to any amount, for the payment of which the writer would furnish Major Franks with the money, the same paper contained also a strict charge to the said Franks not to make known to his most intimate acquaintance, that the writer was concerned in the proposed purchase; these instruc-

tions were not signed, but appeared to me to be in the handwriting of Major General Arnold, whether or not there was a date to it the deponent does not recollect; the other paper contained instructions signed by Major General Arnold, directing Major Franks to purchase for said General Arnold, some necessaries for the use of his table; I compared the writing of the two papers, and believe they were both written by Major General Arnold's own hand; soon afterward Major Franks came into the room and took the papers away.

Timothy Matlack. The deposition of Colonel Fitzgerald is in my handwriting. It was dictated to me by him, and while in the rough by him altered and amended, and afterwards copied fair. The next day he called at my house, and informed me he has seen General Arnold in consequence of his request; that there was one or two alterations he wished to make, in conse-

²⁶ See *post*, p. 438.

quence of the conversation with him, which alterations were made. Colonel Fitzgerald was a total stranger to me, never saw him before to know him.

Major Franks. Am aide-de-camp to Major General Arnold. On General Arnold's arrival in Philadelphia, do not know whether himself or any person on his account, made any considerable purchases of goods. I did receive from General Arnold that paper which Colonel Fitzgerald has mentioned in his deposition. There are circumstances leading to it which I must explain. I had, by being in the army, injured my private affairs very considerably, and meant to leave it, if a proper opportunity of entering into business should happen; had several conversations on the subject with General Arnold, who promised me all the assistance in his power; he was to participate in the profits of the business I was to enter into. At that time, previous to our going into Philadelphia, I had several particular conversations with him, and thought the time had come when I might leave the army with honor, and enter into business. I received at that time, or about that time, I think several days before the enemy evacuated the city, the paper mentioned in Colonel Fitzgerald's deposition that was not signed, as well as the other. Upon our coming into town we had a variety of military business to do; did not purchase any goods, neither did I leave the army. The paper was entirely neglected, neither did I think anything concerning it, until I heard of Colonel Fitzgerald's deposition.

General Arnold told me since, on speaking about the paper, that the reason for his not supporting me in business was, supposing that I had left the army, it was incompatible with his excellency's instructions and the resolution of Congress. General Arnold did not ask me upon his coming into Philadelphia, or at any time after why I had not executed the contents of the paper. I arrived in Philadelphia on 18th day of June, the day the enemy left Philadelphia. The order for purchasing the goods was given to me several days before you went into Philadelphia. Previous to the enemy evacuating the city of Philadelphia, I understood from General Arnold that he was to have the command in the city, on the evacuation taking place. The instructions to purchase goods were given to me, I think, before the General mentioned this matter to me. I believe they were, though I am not certain.

General Arnold. Were not my minute and invoice books open to your inspection? They were. Had you any reason to suppose that any purchases were made directly or indirectly by my orders or on my account, previous to the opening of the stores? No. Did you not suppose my showing you the instructions from General Washington to me, previous to your going into the city a sufficient countermand of the order I had given you to purchase goods? I did not form any supposition on the subject. For what purpose were you sent into the city before me? To procure quarters, and to provide necessaries for the family.

In support of the third charge the *Judge Advocate* produced the letter of Timothy Matlack, to Major General Arnold, dated October 5; the General's answer, dated October 6; Mr. Matlack's letter dated October 10, and the General's answer of October, 1778, which were read, and are as follows:

Sir,

Philadelphia, October 5, 1778.

The militia sergeant who attended at your quarters on Sunday, complains that Major Franks, one of your aids, had given him orders to call his barber, which order was obeyed; that on the barber not appearing the order was repeated, and the sergeant, though hurt both by the order itself, and the manner of it, again obeyed; he also informs me, that he has, this morning, made you acquainted with this complaint, and that you had been pleased to say, that every order given by you or your aids, is to be obeyed. This, I suppose, must intend every proper order.

The militia of the several states have, occasionally rendered the great cause in which we are engaged such services, as must convince every man that it is of very great importance to treat those who are necessarily called out, in such manner as to make the duty as agreeable to them as is consistent with the service to which they are called. For it is upon their will, more than upon the force of any law, that we are to depend for their assistance in the time of need. The severity of military discipline in such a case as that above mentioned, where no important end is to be answered by it, must make every freeman feel. At a time when you were one of the militia of the state of which you are a citizen, what would have been your feelings, had an aid of your commanding officer ordered you to call his barber? From your feelings in such a case, it will be easy to judge of that of other men. Freemen will be hardly brought to submit to such indignities; and if it is intended to have any of the respectable citizens of a state, in service in the militia, military discipline in such instances must be relaxed; but if it is an object to render the militia in the several states contemptible and useless, the continuance of such treatment will probably effect it. Military duty of every kind is rather disagreeable; and perhaps, to freemen, garrison duty more disagreeable than any other. The sergeant above mentioned entered the service to discharge his duty, and as an example to other young men of the city, and not from necessity, in any sense of the word.

It appears to me a duty which I owe to the public, to represent this matter to you in a respectful manner, in expectation that, from attachment to the public interest, you will give such orders as will prevent any further complaints of this kind, which is all the satisfaction sought after, either by the sergeant, who is my son, or,

Sir, your most obedient humble servant,

Major General Arnold.

T. Matlack.

Sir,

Philadelphia, Oct. 6, 1778.

I am to acknowledge the receipt of your letter of yesterday, respecting the militia sergeant who complains of being ill treated. No man has a higher sense of the rights of a citizen and freeman than myself; they are dear to me, as I have fought and bled for them, and as it is my highest ambition and most ardent wish to resume the character of a free citizen, whenever the service of my country will permit. At the same time I beg leave to observe, that whenever necessity obliges the citizen to assume the character of a soldier, the former is entirely lost in the latter, and the respect due to a citizen is by no means to be paid to the soldier, any farther than his rank entitles him to it. This is evident from the necessity of military discipline, the basis of which is implicit obedience, and however the feelings of a citizen may be hurt, he has this consolation, that it is sacrifice he pays to the safety of his country.

You are pleased to ask, "What my feelings would have been on a similar occasion." They have been tried; I have served a whole campaign under the command of a gentleman who was not known as a soldier until after I had been some time a brigadier. My feelings were hurt not only as a citizen, but more so as a soldier; they were, however, sacrificed to the interest of my country. The event proved unfortunate to me; but I have the satisfaction to think I rendered some service to my country.

I wish to make the duty as agreeable to the militia as is consistent with the good of the service, for which purpose military discipline has been greatly relaxed; was it executed with strictness, most of the militia, from their inattention, would feel the effects of it.

I cannot think (as you seem to imagine) any indignity is offered to the citizen, when he is called upon to do the duty of a soldier in the station he is in, which was the case of the sergeant; who though he may be a more respectable character as a citizen, yet, as an orderly sergeant, it is his duty to obey every order of my aids, not a breach of the laws or principles of the constitution, as mine, without judging of the propriety of them; neither can I have any idea from the militia's being put on the same footing as the standing army, they will refuse their assistance, as self preservation is the first principle of human nature, theirs will ever induce them to turn out and defend their property.

These, Sir, are the sentiments of a soldier, a citizen, and of Sir,

Your obedient humble servant,

B. Arnold.

Sir,

I received your letter of the 6th instant; and it gives me real and great pleasure to be informed of your patriotic behavior in the case you mention. Such conduct is the effect of genuine spirit and true greatness of mind; but it is very different from the case I stated. You obeyed, because the essential interest of your country

was concerned, and a regard to your own fame required it; but the same principles, which induced this conduct, would have induced you to spurn at commands dictated by pride and insolence. I cannot bring myself to believe, that the respect due to the citizen is entirely lost when he takes upon himself the character of a soldier. I entertain a higher sense of the rights of citizens and freemen.

If, on the one hand, soldiers are bound implicitly to obey military orders, so, on the other hand, are officers accountable for the orders which they give; and their propriety or impropriety often depend entirely on time and circumstance. Occasions may occur in which an officer may justify commands which expose a citizen to certain death; but I know of none which would justify a command to a citizen serving in the militia to clean his officer's shoes. The necessity of implicit obedience on the part of the citizen, when in military service, is so far from being ground, on which to justify every command which may be given, that it is the strongest possible reason, why an officer should be very cautious and circumspect in his orders; and it also lays the citizen under a necessity of calling officers to a strict account for the orders which they give. I will venture to say, that, in a free government, implicit obedience will not be submitted to much longer than commanders use their authority with great prudence and discretion; and, if it be really necessary, commanders, who destroy it, by degrading and unnecessary orders, they will be accountable for the consequences. You say it is the duty of an orderly sergeant "to obey every order of your aids (not a breach of the laws or principles of the constitution) as yours, without judging of the propriety of them." This sentiment must have dropped from your pen in a moment of haste; as it appears to me to be the sentiment improper to be entertained either by the citizen or soldier. For even common soldiers retain some right to judge of the propriety of the orders which they have obeyed; and to demand satisfaction in cases where improper or unnecessary orders have been given. And freemen will judge for themselves and speak for themselves with decency and firmness when the occasion requires it. The calling of Major Franks barber to dress his hair, was the office of a menial servant, not the duty of a soldier; and I still think it an indignity to a free citizen to be ordered to go on such an errand. Such commands cannot be mistaken for and obeyed as the orders of a wise and prudent general.

My letter to you was written for the single purpose of preventing orders being inadvertently given, which would offend a militia who have suffered greatly many ways; and I had a hope, that you would have thought it proper to have given some assurance that attention would have been paid to this, as it appears to me, necessary precaution; but I am not a little mortified to find the order, of which I complained, so fully justified and supported by you. If it is your intention, as commanding officer, to countenance orders of this kind, it is my duty, as a father, to withdraw my son from a service in which commands are to be given him which to obey would lessen him

in the esteem of the world; and I shall consider it as a duty which I owe to myself to acquaint my fellow citizens of my reason for so doing.

I am, with sentiments of great respect, Sir,
Your most obedient and very humble servant.

T. Matlack.

Philadelphia, October 10, 1778.

Major General Arnold.

Sir,

By your letter of the 10th, I perceive that my sentiments are not clearly understood; but it is needless to discuss a subject which will perhaps be determined more by the feelings than the reason of men. If the declaration, that you will withdraw your son from the service, and publish the reasons, is intended as a threat, you have mistaken your object. I am not to be intimidated by a newspaper. To vindicate the rights of citizens, I became a soldier, and bear the marks upon me. I hope your candor will acquit me of the inconsistency of invading what I have fought and bled to defend. As I am earnestly desirous of closing this correspondence, I shall confine myself to what occasioned it. "An improper order," as you conceive, "given by Major Franks, my aide-de-camp, to the orderly sergeant, your son." Without examining into the propriety or impropriety of the order, about which we may differ, I perfectly agree with you, that the delivering of it in a haughty, imperious or insolent manner, is blameable; and if the sergeant had so represented it to me at the time, he would have had justice. The affair is now out of my hands, and lies between the sergeant and the major. If the latter hath behaved amiss, it is his duty to make reparation. I trust I never shall countenance pride or insolence to inferiors in him, or any other officer under my command. Let me add, that disputes, as to the rights of citizens and soldiers, in conjunctures like the present, may be fatal to both.

I am, Sir,

Your most obedient humble servant,

B. Arnold.

Philadelphia, October 12, 1779.

Timothy Matlack, Esq.

William Matlack. Was an orderly sergeant from the militia at General Arnold headquarters. A servant girl came and asked me if I was an orderly sergeant; told her I was. She said Major Franks' orders were, that I should fetch his barber, which order I obeyed, supposing it to

come from him. Soon after my return, Major Franks came to where I was stationed, and asked me if I had been for his barber. I told him I had, but he was not at home, and that I had left the orders that were necessary for his coming up, as soon as he should come home. Major Franks

said he did not believe he would come, and then went away. Some considerable time after, he came again, and said he did not believe he would come, and he believed I had better go again; to which I made no reply, but walking back in the entry, after a few minutes, asked a negro man if it was customary to give such orders to the orderly sergeants. He said it was. I replied that Major Franks ought to consider, that the militia could not be expected to do such duty. Major Franks then came out of a back room, and said, sergeant, I thought I had ordered you to go for my barber; told him I had received no such order. He asked me why I did not go; told him I waited his orders. He then told me to go, and I told him, with his orders I would go, and did go. Major Franks, on my return, asked me if I had been; told him I had, and left the same orders as before. In the morning made a complaint to the general, nearly in these words; and he in-

formed me it was customary for sergeants to do such duty; and gave me to understand, not in an abrupt manner, that if I did not like such duty, I should not have come there. The general said at the time, that if Major Franks had insulted me at the time he gave me the order, it was wrong, and he did not approve of that.

General Arnold. Was any menial office imposed upon you, or upon any orderly sergeant, to your knowledge? I conceived the office that was imposed on me as menial; and the orderly sergeant who stood at the same time with me, belonging to the continental troops, complained of Major Franks giving him a small bundle of paper in his hand, bidding him follow him, which he did; and upon his coming to a house a small distance off, bid him give him the bundle of papers and return, which the man complained of to me, when he returned, as an insult.

December 28.

The last charge (No. 5) was now taken up.

The *Judge Advocate* produced and read letters from Messrs. Chaloner and White and Mr. John Mitchell to the wagon master of the state of Pennsylvania requesting in one letter 300, in another 200, in another 300 wagons to carry flour to the Army and the French fleet, and the *Judge Advocate* also produced a remonstrance from the state of Pennsylvania, against the enormous wagon service, dated October 1, 1778, which being read, is as follows:

Philadelphia, October 1, 1778.

The council resumed the consideration of the demand made by the quartermaster general of eight hundred wagons, besides what are now employed for the United States, and observed with astonish-

ment, that but a few weeks since a like demand was made for eight hundred wagons, which were impressed with great severity and irregularity, and the whole wagon service to the westward falls on this state, at a time when the country is drained of horses and our wagons very generally disabled, destroyed, or carried off by the enemy, and considering also, that the wagons of this state are taken into other states at a great distance; thereupon,

Ordered, That the delegates of Pennsylvania be instructed to remonstrate to Congress against the drawing out so great a number of our wagons and horses, and thereby throwing so great an over-proportion of this heavy and distressing service on Pennsylvania.

Extract from the minutes,

T. Matlack, Secretary.

Also an order from David S. Franks, aide-de-camp to Major General Arnold, to Jesse Jordan, wagon master, as follows:

You will proceed immediately with your teams to Eggharbor or the Forks, take the orders and directions of Captain Moore, whom you will obey in every particular.

By order of General Arnold,

David S. Franks, Aid de Camp.

To Jesse Jordan, wagon master.

There were also several depositions of wagoners who testified that they had enlisted in the service of drawing loads for the Army, but found that it was private property they were carrying.

December 29.

The *Judge Advocate* having concluded his evidence with respect to the several charges exhibited against *General Arnold*, the General was desired to proceed in his defense.

Timothy Matlack (sworn).

General Arnold. Did not Captain Shewell take the oath of allegiance to the state of Pennsylvania, agreeable to law, by the first day of June, 1778? I do not know. Did he not inform you that he had? Not that I recol-

lect. Did Captain Shewell produce to the president and council of the state of Pennsylvania, a certificate of his having taken the oath of allegiance to the state, as required by law? Not that I know or recollect.

*Thomas Proctor.*²⁷ Am a Col-

²⁷ COL. PROCTOR was a native of Ireland, and settled in America before the Revolution. He engaged in the service and as Colonel of Artillery, and at the battle of Brandywine, was particularly distinguished for his courage. He was by trade a carpenter. He died March 16, 1807, aged 67 years, and his remains were interred in St. Paul's church yard in Philadelphia.

onel of Artillery. In January last Colonel North²⁸ received a letter from Mr. Robert Shewell, in which he requested us to procure him a pass to go to Virginia to settle with Stacey Hepburn; in March, after Mr. Shewell had returned from Virginia, where he had gone by permission of General Scott,²⁹ he informed me of his intentions of coming with his family from the city to live and that he had taken a house in Maryland to live in; that the reason of Mr. Shewell's not leaving the city sooner, was, because of the indisposition of Mrs. Shewell; in May I received a letter from Mr. Shewell, informing me that he was loading a vessel for the use of the American army, and desiring me to procure a passport for that purpose, and for himself and family; I did not apply for it. On 3d June, Mr. Shewell came to headquarters and informed me he had come for a protection for his vessel, that he had loaded her with a cargo suitable for the army and procured a captain to serve him, and procured a pass from General Arnold, as I understood; do not know of any application being made to General Washington for a pass; the Major General of the day, and not the Commander-in-Chief, is the proper officer to make application to for passports.

David Beveridge. Am a Philadelphia merchant. Mr. Robert Shewell applied to me on the supposition of the British army being about to leave Philadelphia, and some short time before they left that city, and asked me if I would be concerned in a voyage, to send a quantity of salt into some American port; said I had no objection, and agreed to be concerned in the said schooner, and to pay two hundred pounds towards purchasing a third of the vessel to load with salt, sugar and rum; proposed to clear her out for Newfoundland, for such a cargo, as the most unsuspected port; but William Shirtliff, one of the partners, some time after told me that he could procure a clearance for New York for the said schooner, and nowhere else, upon which I told him it would do very well; some time after (having heard in the interim, that Mr. Shirtliff had divulged the scheme of the voyage to several persons, and spoken too publicly of it), told him I could not be concerned in the matter, and absolutely declined it, having just before this got out of jail, where I had been kept for some time by order of General Howe; when I engaged to be part owner of said schooner, called on Governor M'Kinley, who was lately from Wilmington, then a pris-

²⁸ COL. WILLIAM NORTH was an aide to Baron Steuben in the Revolution, and became one of his executors. He was Adjutant General of the Army for some years, and was a short time in the United States Senate from New York. He served five years in the Legislature, and was thrice speaker of the assembly. Having married a daughter of the Hon. James Duane, he settled at Duaneburgh, in Senectady county, where he spent his later years. He died at the age of eighty-three.

²⁹ Gen. Charles Scott of Virginia.

oner in Philadelphia, and asked him what he thought of sending into Wilmington a cargo of salt, and the governor said it would be very acceptable, but in his situation, being a prisoner on parole he did not choose to say anything on the subject; asked the governor, if he could not give us something like a passport, certifying the intention of the voyage, in case of accident, which the governor for the aforesaid reason, declined; I advised the company to load her so deep with salt as to prevent her taking in goods on freight, the refusal of which might cause a suspicion of their intention in case of her not being fully loaded; the company accordingly purchased a large quantity of salt, and put it on board; understood salt was of so little value at New York that nobody would carry it there for nothing; at the time of the enemy's leaving said city, very high prices were given for carrying of goods upon freight, and great numbers of vessels, or the owners thereof, were very desirous of having their vessels employed in that way. Robert Shewell and William Shirtliff of the State of Pennsylvania were the persons who consulted me on the scheme; had no reason at all to suppose it was their intention to go into any port in possession of the enemy; went on board the said vessel and viewed her, but saw no guns on board her.

Stephen Collins. Am a Phila-

delphia merchant; know the schooner *Charming Nancy* that lately was the property of William Shirtliff and Co., of Pennsylvania, some time in last spring Shirtliff and Co. applied to me for advice and assistance respecting a plan they were forming at the time the intentions of the enemy became generally known of evacuating the city of Philadelphia to escape with their property from the enemy as well as to serve our country. We proposed to save the ship, to load the vessel with articles as were most necessary for our country, and which could not immediately occasion a suspicion, to clear out for the port of New York, to fall in company with the British fleet from the city of Philadelphia, under pretense of going to New York, and to watch a favorable opportunity of escaping into some of the creeks emptying into the river Delaware, or into such other port or inlet in the possession of the United States, as they might be able; to prevent suspicion taking place with the enemy I advised the company to entrust the knowledge of their designs with but few persons, and to contrive matters so as to have their vessel fully loaded with their own effects. The real and absolute owners of the vessels with their cargoes were William Shirtliff, William Constable, Robert Shewell, James Seagrove and David Shoemaker.

Major General Arnold not having all his evidence with respect to the first charge, moved the court that he might go into his proofs relative to the second charge, and be at liberty to revert to the first charge when his evidence arrived, which was granted.

With respect to the second charge against him, the *General* produced *Major Franks'* and *Major Clarkson's* deposition, which was read, and is as follows:

We do certify, That when shops in this city were shut in June last, by order of Major General Arnold, in consequence of a resolution of Congress of the 4th of June, we do not know of General Arnold's making any purchases of goods of any kind, directly or indirectly; and we have every reason to believe that no such purchases were made either by General Arnold or his agents, except a few trifling articles to furnish his table, and for his family's use, most of which were supplied him by the quarter master or commissary. General Arnold's invoices, minute and account books being always open to our inspection, confirms us in our belief as mentioned above.

*Major Franks.*³⁰ The day General Arnold came to town, I met General Joseph Reed, president of the state of Pennsylvania. He told me that they were selling goods in town, and advised me to send a crier round to prohibit the sale of goods. I at first agreed to it, but afterwards thought it was doing more than I had a right to. I met him again, and told him that I would put it off until General Arnold came. When General Arnold came to town, General Reed came to his quarters, and upon consulting with him, wrote a proclamation, which I think was the same that was published, with some immaterial alterations. Do not know of General Arnold's friends having asked for licenses to purchase goods, but know that

many applications were refused; know of no licenses being granted to any person to purchase goods.

General Arnold. Do you know whether General Arnold, or any person by his orders, directed any goods to be laid by for his use? No; except some trifling articles from the commissary and quartermaster.

Do you know of any articles being laid by, except some trifling articles for my own use, the use of my family, for General Washington, and for one or two other officers? No; except two pipes of wine, which were afterwards drank in the family. Do you know whether the two pipes of wine were purchased previous to the shops being opened? Don't recollect that

³⁰ DAVID SOLEBURY FRANKS was one of the aides of General Arnold, through the period of his command at Philadelphia, and until his final flight to the enemy in September, 1780. From his close relations with the traitor, suspicions were naturally excited in regard to his fidelity to the colonial cause. To remove these, Majors Franks and Varick solicited and obtained a court of inquiry, which exonerated both of these officers from any connection with the plot. The traitor, himself, in a letter written on board the *Vulture*, soon after his escape, and addressed to General Washington, exonerated both of his aides from any participation in his plans.

they were purchased before the shops were opened.

Do you know whether any of the articles that were laid by were taken from the shops previous to the legal opening of them? I do not.

Major Franks. All the articles of clothing of consequence that were supplied for General Washington and several other officers, as well as for General Arnold,

were supplied by the clothier general or his agent.

The COURT. Do you know whether General Arnold purchased any part of the Charming Nancy or her cargo? I do not of my own knowledge; but I have heard General Arnold say he did, and I have also heard Mr. Seagrove say he did. This was subsequent to General Arnold's granting the pass.

December 30.

Major General Arnold went back to the first charge, and proceeded to produce evidence respecting it.

General Arnold to Timothy Matlack (sworn). Do you know whether the owners of the Charming Nancy voluntarily remained with the enemy? Mr. Shewell did, as I understand; I understood it from him. Did Mr. Shewell assign his reason for remaining with the enemy? If he assigned any reasons I do not recollect what they were.

Lieutenant Colonel Hamilton. As to Mr. Seagrove's general political character, have heard it frequently discussed, and very different opinions entertained of it. Many were of opinion that he was warmly attached to the American cause, and others that he was not. He had a commercial connection of a very delicate nature with a Mr. M'Evers, reputedly a disaffected person, which was supposed by those acquainted with him to have restrained his political conduct, and made him less active in favor of America than he otherwise would have been; others considered him as a man of address, who wished to stand fair with both parties, though in reality more friendly to the opposite party than to us.

Have heard several liberal men speak of his situation with a degree of compassion, as producing an opposition between his principles and his private connections. My own opinion of him was favorable. At an early period of the war he entered into an independent company, but the company afterwards came to nothing. The political conduct of Mr. Seagrove has since confirmed the favorable impressions I had before of him.

Major Franks. I knew nothing of Mr. Seagrove's political general character previous to General Arnold giving the protection for the Charming Nancy; have understood that he was considered a whig. Since that period have been in actual service with him; never knew either Mr. Shirtliff or Mr. Constable before I went to Philadelphia, or saw them in my life before; knew Mr. Shewell before the protection was granted, and always supposed him to be well affected to America; he was in one of the militia companies in Philadelphia, some time before the enemy got possession of it. He told me

his reasons for staying in Philadelphia were the impracticability of removing at the time; his wife having been brought to bed and dangerously ill. He told me frequently that his intentions

were to remove out of town. Captain Shewell told me he had taken the oath of allegiance to the state of Pennsylvania, previous the granting the pass.

General Arnold now returned to the fifth charge.

Major Franks. I went to Colonel Mitchell's by desire of General Arnold, to know whether he could spare him some wagons to transport some goods that were in danger of falling into the enemy's hands at Eggharbor; was told that wagons could not be spared at that time, but that soon it might happen, as they expected a number of wagons in town; brought that answer to General Arnold and some days after General Arnold told me to go to the quarter master's to inquire and see if possible that wagon master who was to conduct a brigade of wagons for him, and to order them to go to Eggharbor or the forks, and there to take a Captain Moore's directions, respecting what he was to do. When he got to the office wrote a letter ordering the wagon master so to do, and signed it officially; after which the wagon master went.

Understood that General Arnold was to pay for the wagons; that he got them as a favor and that they were not to transport public stores, but private property for himself and friends, and that he did not order them officially. When I went to Colonel Mitchell for the wagons I told him that the goods were in imminent danger, and that the loss of so many goods would be a loss to the continent, as we wanted goods.

John Hall. Major Franks or Major Clarkson came to Colonel Mitchell's office, and made the application to me, in Colonel Mitchell's absence. The application was that General Arnold wanted a brigade of wagons, and to send the wagon master to him for directions; it was not made in writing; neither Major Franks or Major Clarkson mentioned for what purpose the wagons were wanted. When Jordan came to town, sometime in January, and had his pay roll made out, Colonel Mitchell told him he must go to General Arnold and get his pay. I then turned to the book and saw he had been from the twenty-second to the thirtieth of October. Colonel Mitchell told me that it should not be there at all, and had no business in the book, as General Arnold was to pay the hire of the wagons, and he was angry with me on account of it, upon which I took up my pen and obliterated the entry of the thirtieth of October, determining in my own mind that Colonel Mitchell should never give me a frown for it again, and that it should not appear in the book; then understood by Colonel Mitchell's mentioning what I have said, to me, that they had been sent to transport property that was not the public's.

General Arnold now took up again the second charge.

Elias Boudinot.³¹ Was in Philadelphia when General Arnold took possession of the city, I called on him several times and found him in a state of health which I thought rendered him unequal to the fatigue of his station. He was much crowded with business, and I ventured to warn him of the ill consequences of so much attention to it, and advised to several regulations I thought necessary. He showed the resolutions of Congress relative to the goods that should be found in the city, until the arrival of joint committees of Congress and the executive council, and the public officers who were to purchase for the army, or something to this effect.

I advised the general to the issuing of public orders, to prevent the selling of goods until the arrival of the committees aforesaid, and also to nominate a number of the citizens of established character, to superintend and regulate the little affairs of the citizens in the meanwhile, so as to prevent his being perplexed with the civil as well as military department; and I mentioned several gentlemen whose political characters I thought he might depend on. While we were talking, Mr. Joseph Reed (now

the president of the state) then also a member of Congress, came in and told the general he had been making a few memorandums of some little matters which he (Mr. Reed) thought necessary for his attention, and which otherwise might escape the general's notice. Mr. Reed then read them from a paper he produced, and I immediately told him they were very similar to what I had just been recommending to the general, and repeated to him what I had been saying. He replied that he had the substance of it down, except one or two hints, which one of us immediately added to the paper he had. The general then begged that we would draw up what we thought necessary, and he would have it printed. Mr. Reed then sat down and drew up a draft of what he thought proper; believe I corrected it, but am not certain; am clear in my mind that it contained the amount of what we both advised the general to do, and particularly to the prevention of the sale of goods, until the orders of Congress were complied with. Remember to have advised several friends to be careful not to sell the next day, as such a public prohibition had gone to the press.

GENERAL ARNOLD'S ADDRESS.

Major General Arnold. Mr. President and gentlemen of this honorable court: I appear before you to answer charges

³¹ MR. BOUDINOT was at this time a member of the continental Congress, of which he was subsequently chosen president. In 1796, he was appointed director of the mint; in 1805, resigned, and retired to

brought against me by the late supreme executive council of the commonwealth of Pennsylvania. It is disagreeable to be accused, but when an accusation is made, I feel it a great source of consolation to have an opportunity of being tried by gentlemen whose delicate and refined sensations of honor will lead them to entertain similar sentiments concerning those who accuse unjustly, and those who are justly accused. In the former case your feelings revolt against the conduct of the prosecutors, in the latter, against those who are deserved objects of a prosecution. Whether those feelings will be directed against me, or against those whose charges have brought me before you, will be known by your just and impartial determination of this cause.

When the present necessary war against Great Britain commenced I was in easy circumstances and enjoyed a fair prospect of improving them. I was happy in domestic connections and blessed with a rising family who claimed my care and attention. The liberties of my country were in danger. The voice of my country called upon all her faithful sons to join in her defense. With cheerfulness I obeyed the call. I sacrificed domestic ease and happiness to the service of my country, and in her service have I sacrificed a great part of a handsome fortune. I was one of the first that appeared in the field, and from that time to the present hour have not abandoned her service.

When one is charged with practices which his soul abhors, and which conscious innocence tells him he has never committed, an honest indignation will draw from him expressions in his own favor which, on other occasions might be ascribed to an ostentatious turn of mind. The part which I have acted in the American cause has been acknowledged by our friends and by our enemies to have been far from an indifferent one. My time, my fortune, and my person have been devoted to my country in this war, and if the sentiments of those who are

private life at Burlington, N. J. On the formation of the American Bible Society, he was chosen its first president. He died, October 24, 1821, aged 81.

supreme in the United States, in civil and military affairs, are allowed to have any weight, my time, my fortune and my person have not been devoted in vain. You will indulge me, gentlemen, while I lay before you some honorable testimonies, which Congress and the commander-in-chief of the armies of the United States have been pleased to give of my conduct. The place where I now stand justifies me in producing them.

Valley Forge, 7th May, 1778.

Dear Sir.

A gentleman of France having very obligingly sent me three sets of epaulets and sword knots, two of which, professedly, to be disposed of to any friend I should choose; I take the liberty of presenting them to you and General Lincoln, as a testimony of my sincere regard and approbation of your conduct.

I have been informed by a brigade major of General Huntington, of your intention of repairing to camp shortly; but notwithstanding my wish to see you, I must beg that you will run no hazard by coming out too soon.

I am sincerely and affectionately,

Your obedient,

G. Washington.

Headquarters, Morristown, May 8, 1777.

Dear Sir,

I am happy to find that a late resolve of Congress, of the 2nd instant, has restored you to the continental army.

The importance of the post at Peek's Kill, and its appendages, has become so great that it is now necessary to have a major general appointed to the command of it.

You will therefore immediately repair to that post and take charge of it till a general arrangement of the army can be affected and the proper province of every officer assigned.

I am, sir,

Your most obedient servant,

G. Washington.

IN CONGRESS

11th July, 1777.

Ordered, That an extract of General Washington's letter of the 10th, so far as it relates to General Arnold, be sent to him, and that he be directed to repair immediately to headquarters, and follow the orders of General Washington.

Extract from the minutes,

Charles Thompson, Secretary.

Extract of a letter from General Washington to Congress, dated Morristown, July 10, 1777:

"If the event mentioned by General Schnyler should not have happened, we cannot doubt, but General Burgoyne has come up the lake, determined, if possible, to carry his point, I mean, to possess himself of our posts in that quarter, and to push his arms further. Supposing this not to have happened, as our continental levies are so deficient in their number, our security and safety will require that aids from the militia should be called forth, in cases of emergency. If it has, there is now an absolute necessity for their turning out to check General Burgoyne's progress, or the most disagreeable consequences may be apprehended. Upon this occasion, I would take the liberty to suggest to Congress, the propriety of sending an active, spirited officer to conduct and lead them on. If General Arnold has settled his affairs and can be spared from Philadelphia, I would recommend him for this business, and that he should immediately set out for the northern department. He is active, judicious and brave, and an officer in whom the militia will repose great confidence. Besides this, he is well acquainted with that country, and with the routes and most important passes and defiles in it. I do not think he can render more signal service; or be more usefully employed at this time, than in this way. I am persuaded his presence and activity will animate the militia greatly, and spur them on to a becoming conduct. I could wish him to be engaged in a more agreeable service, to be with better troops; but circumstances call for his exertions in this way, and I have no doubt of his adding much to the honor he has already acquired."

Examined with the original.

Geo. Bond, Dep. Sec. of Congress.

IN CONGRESS

May 20, 1777.

Resolved, That the quarter master general be directed to procure a horse and present the same properly caparisoned, to Major General Arnold, in the name of this congress, as a token of their approbation of his gallant conduct, in the action against the enemy, in their late enterprise to Danbury, in which General Arnold had one horse killed under him, and another wounded.

IN CONGRESS

November 4, 1777.

Resolved, That the thanks of Congress, in their own name, and in behalf of the inhabitants of the thirteen United States be presented to Major General Gates, commander in chief of the northern department, and to Majors General Lincoln and Arnold, and the rest of the officers and troops under his command, for their brave and successful efforts, in support of the independence of their coun-

try, whereby an army of the enemy of ten thousand men have been totally defeated; one large detachment of it, strongly posted and entrenched, having been conquered at Bennington; another repulsed with loss and disgrace from Fort Schuyler; and the main army of five thousand men, under Lieutenant General Burgoyne, after being beaten in different actions, and driven from a formidable post and strong entrenchments, reduced to the necessity of surrendering themselves upon terms honorable and advantageous to these states, on the 17th day of October last, to Major General Gates.

If these testimonies have any foundation in truth (and I believe the authority of those who gave them will be thought at least equal to that of those who have spoken and wrote and published concerning me in a very different manner) is it probable that after having acquired some little reputation, and after having gained the favorable opinion of those whose favorable opinion it is an honor to gain, I should all at once sink into a course of conduct equally unworthy of the patriot and soldier? No pains have been spared, no artifice has been left untried to persuade the public that this has been the case. Uncommon assiduity has been employed in propagating suspicions, invectives, and slanders to the prejudice of my character. The press of Philadelphia have groaned under libels against me, charges have been published, and officially transmitted to the different states (and to many parts of Europe, as I am informed) before they were regularly exhibited, and long before I could have an opportunity of refuting them; and indeed every method that men ingeniously wicked could invent, has been practiced to blast and destroy my character. Such a vile prostitution of power and such instances of glaring tyranny and injustice I believe are unprecedented in the annals of any free people. I have long and impatiently wished for an opportunity of vindicating my reputation, and have frequently applied for it, but the situation of affairs at the beginning and during the continuance of the campaign, necessarily and against the general's inclination, prevented it until now. But now it is happily arrived, and I have the most sanguine hopes of being able to avail myself of it, by satisfying you, and through your sentence, by satisfying the

world, that my conduct and character have been most unwarrantably traduced, and that the charges brought against me are false, malicious and scandalous.

The first charge is, granting a protection.

In answer, the permission was given on the fourth day of June, 1778, when, though I had no formal instructions from the general to take the command in Philadelphia. I had intimations given me that I should be fixed upon for that appointment. The gentleman who applied for the protection in behalf of himself and company, was not then residing in the city with the enemy; he had taken the oath of allegiance to the state of Pennsylvania, required by its laws, as appeared by a certificate which he produced to me. What his political character, and those of the others, in whose behalf he applied to me, were, I pretend not to ascertain; nor do I mean to become their advocate, any further than the justice due to an injured character requires. I think it has been clearly proved by the testimony of several gentlemen (not parties in this matter) that the general character of those gentlemen was unexceptionable, some of them had taken an active part in favor of these states; and the tenor of their conduct since, will, I presume, justify a favorable opinion of them. It is enough for me to show that their intentions with regard to this vessel and cargo seemed to be upright, and that the design of saving them for the use of the citizens of the United States, appeared to be laudable, instead of being reprehensible. This appears evident from the depositions of Mr. Collins, Mr. Beveridge and Colonel Proctor.

Why the protection is viewed as an indignity to the authority of the state of Pennsylvania, I own I cannot discover. The president and council of that state were then in Lancaster; the pass to the vessel was to "sail into any of the ports of the United States of America." To sail into the port of Philadelphia was not the object; the vessel was there already. If there was an encroachment upon the authority of any state, it must have been some other than the state of Pennsylvania. The vessel sailed into one of the ports of New

Jersey; the government of that state, though far from being insensible to its honor, has never complained of the indignity offered to it by my protection; a jury of that state acquitted the vessel by their verdict; and the judge of admiralty of that state confirmed the verdict by his decree, which is in evidence before this honorable court.

It is part of this charge that the permission was granted without the knowledge of the commander-in-chief, though then present. I think it peculiarly unfortunate that the armies of the United States have a gentleman at their head, who knows so little about his own honor, or regards it so little, as to lay the president and council of Pennsylvania under the necessity of stepping forth in its defense, perhaps it may be of use to hint,

Non tali auxilio eget, nec desensoribus istis.

The general is invested with power, and he possesses spirit to check and punish every instance of the disrespect shown to his authority; but he will not prostitute his power by exerting it upon a trifling occasion; far less will he pervert it when no occasion is given at all.

His excellency knew, and you, gentlemen, well know, it has been customary for general officers of the army to grant passes, protections for persons and property, to the inhabitants of the United States, who appeared friendly to the same. The utility of the measure, which was evident in the present case, without any precedent, I conceived to be a sufficient justification. The protection was designed only to prevent the soldiery from plundering the vessel and cargo, coming from the enemy, that proper authority might take cognizance of the matter. I must beg leave to mention a resolution of Congress in point. I do not recollect the date. It was, however, previous to the pass. That honorable body therein promise, to all persons in the enemy's service, for their encouragement and reward, all vessels and cargoes that they shall seize upon, in possession of the enemy, and bring into

any of the United States. If such reward is given to our enemies, can it be esteemed criminal to protect the property of the citizens of these United States, when coming from the enemy? Certainly not. At the time the protection was given, I had no doubt of the right or propriety of giving it. I am now confirmed in my opinion, and that the resolution of Congress I have mentioned, warrants the measure. But, if strictly considering the matter, it shall be thought that I exceeded my power, by granting the protection, I hope His Excellency General Washington, and this honorable Court, will do me the justice to believe, that it was not out of any disrespect to his authority, but an error in judgment, as I was convinced at the time I had a right to grant the pass; and had I refused I should have thought myself culpable.

The second charge consists in having shut up the shops and stores on my arrival in the city, so as even to prevent officers of the army from purchasing, while I privately made considerable purchases for my own use, as is alleged and believed.

The resolution of Congress, "directs me to take early and proper care to prevent the removal, transfer, or sale of any goods, wares or merchandise, in the possession of the inhabitants of the city, until the property of the same shall be ascertained by a joint committee, consisting of persons appointed by Congress, and of persons appointed by the supreme executive council of the state of Pennsylvania." My instructions from the general mention, "that I will find the objects of my command specified in the resolution of Congress, and that the means of executing the powers vested in me were left to my own judgment." How could I better prevent the removal, transfer or sale of any goods, wares and merchandise, in the possession of the inhabitants of the city, "than by shutting up the shops and stores?"

If "the officers of the army were prevented from purchasing," it was because the sale of any goods was directed by Congress to be prevented, in which the sale of goods to officers was necessarily included; and it was in order (as is

stated in the proclamation prohibiting the removal, sale, or transfer of goods) "that the quartermaster, commissary and clothier generals, might contract for such goods, as were wanted for the use of the army."

What I have already mentioned, renders it surprising that the shutting up the shops and stores should be made a charge against me by any man, or body of men. What I am going to mention, renders it peculiarly surprising that this charge should be made against me by the gentleman, who is now president of the state of Pennsylvania. It is in evidence before this honorable court, that this very gentleman proposed to one of my aides, that he, even before my arrival in town, "should publish an order to prevent the selling any goods or merchandise; that this very gentleman was urgent to have this done; that this very gentleman, after my arrival in town, drew up a proclamation for that purpose, which was presented to me." The same gentleman now exhibits the same measure as an article of accusation against me.

The last part of this charge is of a serious nature indeed. It is that, while I prohibited others from purchasing, I privately made considerable purchases for my own benefit, "as is alleged and believed;" if this part of the charge is true, I stand confessed, in the presence of this honorable court, the vilest of men; I stand stigmatized with indelible disgrace, the disgrace of having abused an appointment of high trust and importance, to accomplish the meanest and most unworthy purposes. The blood I have spent in defense of my country will be insufficient to obliterate the stain.

But if this part of the charge is void of truth; if it has not even the semblance of truth, what shall I say of my accusers? what epithets will characterize their conduct, the sentence of this honorable court will soon determine.

It is "alleged and believed," that I privately made considerable purchases for my own benefit. I am not conversant in the study of jurisprudence; but I have always understood, that public charges ought to have some other foundation to rest upon, than the mere unsupported "allegation and be-

lief." Who "allege and believe" this accusation? None, I trust, but the president and council of Pennsylvania; because, I trust, none else would allege and believe anything tending to ruin a character, without sufficient evidence. Where is the evidence of this accusation? I call upon my accusers to produce it. I call upon them to produce it, under the pain of being held forth to the world, and to posterity, upon the proceedings of this court, as public defamers and murderers of reputation.

They have indeed produced the evidence of a certain Colonel Fitzgerald, to prove that he saw an anonymous paper in the hands of Major Franks, one of my aides. I shall take no notice of the paper he alludes to, as it cannot be deemed a proof, or admitted as evidence; but the manner of his procuring a sight of the paper, I cannot help taking notice of. Lodging in the same house with Major Franks, in his absence, Colonel Fitzgerald's curiosity prompted him to examine Major Franks' papers, when he stumbled upon a secret too big for him to keep. Was not this a gross violation of the confidence subsisting between gentlemen? but what shall I say of the use this gentleman made of his secret? I will not say it was a disgrace to the character of a soldier and gentleman. I will leave it to the gentleman's own feelings, which (if he is not callous) will say more to him than I can possibly do on the subject. In the nature of things, it is impossible for me to prove, by positive and direct evidence, the negative side of a charge; but I have done all that in the nature of things is possible.

On the honor of a gentleman and soldier, I declare to gentlemen and soldiers, that the charge is false.

My aides de camp were acquainted with my transactions, and had access to my papers. "My invoice, my minute and account books, were always open to their inspection." Could I have made considerable purchases, without their knowledge? "And yet they did not know of my making any purchases of goods of any kind, directly or indirectly; and they had every reason to think, that no such purchases were made,

either by me or my agents, except a few trifling articles to furnish my table, and for my family's use; most of which were supplied me by the quartermaster, commissary and clothier generals."

If I made considerable purchases, considerable sales must have been made to me by some person in Philadelphia. Why are not these persons produced? Have my prosecutors so little power and influence in that city, as to be unable to furnish evidence of the truth?

With respect to the third charge of the supreme executive council of the state of Pennsylvania, I think it necessary to make some observations on it, because it is evidently calculated, by a false coloring of a trifling and innocent transaction, to subject me to the prejudice of the freemen of these states, and particularly of the militia of the state of Pennsylvania.

I am charged "with imposing menial offices upon the sons of freemen of this state, when called forth by desire of Congress to perform militia duty; and when remonstrated to thereupon, justifying myself in writing, upon the ground of having power so to do." The letters which are in evidence before this honorable court, which passed between Mr. Secretary Matlack and myself, will explain the sole transaction, upon which this general accusation is founded.

By what strained construction the sentiments which I have expressed, "that when a citizen assumes the character of a soldier, the former was entirely lost in the latter," should be extended to a justification of myself, on the mere principle of power, is somewhat extraordinary. My opinion in this matter is confirmed, not only by the sentiments of many of the most enlightened patrons of liberty in this and other countries, but sanctified by the militia law of several free states, both in Europe and America, particularly Switzerland and the state of New York, where (if I am not mistaken) the militia of the latter, when called forth into continental service, are subjected to the same rules of discipline with the troops of the United States; the character and con-

duct of that militia prove the policy of this principle. My ambition is to deserve the good opinion of the militia of these states, not only because I respect their character and their exertions, but because their confidence in me may (as I flatter myself it has hitherto been) prove beneficial to the general cause of America; but having no local politics to bias my voice or my conduct, I leave it to others to wiggle themselves into a temporary popularity, by assassinating the reputation of innocent persons, and endeavoring to render odious a principle, the maintenance of which is essential to the good discipline of the militia, and consequently to the safety of these states. I flatter myself the time is not far off, when, by the glorious establishment of our independence, I shall again return into the mass of citizens: 'tis a period I look forward to with anxiety; I shall then cheerfully submit as a citizen to be governed by the same principle of subordination, which has been tortured into a wanton exertion of arbitrary power.

This insinuation comes, in my opinion, with an ill grace from the state of Pennsylvania, in whose more immediate defense I sacrificed my feelings as a soldier, when I conceived them incompatible with the duties of a citizen, and the welfare of that state.

By a resolution of Congress, I found myself superseded (in consequence of a new mode of appointment of general officers) by several who were my juniors in service; those who know the feelings of an officer (whose utmost ambition is the good opinion of his country) must judge what my sensations were at this apparent mark of neglect. I repaired to the city of Philadelphia in the month of May, 1777, in order either to attain a restoration of my rank, or a permission to resign my commission; during this interval, the van of General Howe's army advanced, by a rapid march, to Somerset courthouse, with a view (as was then generally supposed) to penetrate to the city of Philadelphia.

Notwithstanding I had been superseded, and my feelings as an officer wounded, yet, on finding the state was in imminent danger from the designs of the enemy, I sacrificed

those feelings, and with alacrity put myself at the head of the militia, who were collected to oppose the enemy, determined to exert myself for the benefit of the public, although I conceived myself injured by their representatives. How far the good countenance of the militia under my command operated, in deterring General Howe from marching to the city of Philadelphia, I will not pretend to say; certain it is, he altered his route.

What returns I have met with from the state of Pennsylvania, I leave to themselves to judge, in the cool hour of reflection, which (notwithstanding the frenzy of party, and the pains so industriously taken to support a clamor against me) must sooner or later arise.

I will conclude this subject by reading a letter from Mr. Matlack, received subsequent to the letters which have been already read, which I consider as an insult and indignity. The letter will speak for itself; the spirit and tendency of it are very obvious.

Philadelphia, March 17, 1779.

Sir,

It appears to me proper to communicate to you, that I shall, on Saturday evening next, lay before a respectable number of citizens, the several letters which have passed between you and myself, relating to the orders delivered by one of your aides to my son. My intention is to consult with them on the measures necessary to prevent effectually a like insult being offered by you to any other citizen of this state. I say by you, because it is intimated in your letter of the 12th of October that the matter lies between your major and my son; whereas the order being your order, and my son several years under age, I conceive it to lie between yourself and me.

And am, sir,

Your very humble servant,

T. Matlack.

To Major General Arnold.

The fourth charge is evidently triable only in a court of common law, I should not therefore notice it at present, did it not add to the torrent of aspersion which has been poured forth against me, and which, if not checked, may leave upon the minds of fellow soldiers and citizens, disagreeable impressions, even though I should be acquitted of the charges which

are cognizable by the law martial. I therefore beg leave to lay before the Court, a certified copy of an indictment preferred against me for this supposed offense, in behalf of the commonwealth of Pennsylvania, with the jurors return, which said bill was rejected by the Grand Jury and I was discharged from the complaint.³²

Notwithstanding all the influence of the ruling powers of Pennsylvania, which must be well known by several of this honorable Court; the unexampled method adopted by the council to prejudice the minds of the citizens against me, previous to a trial, and the daily calumnies invented and industriously circulated to prevent the popular heat from subsiding; the impartiality and good sense of a body of freemen of the city of Philadelphia, were impregnable to all the arts made use of to poison the fountain of justice. And here I cannot but congratulate my countrymen upon the glorious effects of the exertions we have made, to establish the liberties of ourselves, and posterity, upon the firm basis of equal laws. Had it not been for the grand bulwark against the tyranny of rulers, the trial by peers, it is easy to foresee, from the spirit of those who have been my accusers what must have been my fate. When I reflect on this circumstance, I

³² The case was brought by Attorney General Sergeant in the Philadelphia Court of Oyer and Terminer, in April, 1779, before Thomas McKean, William Augustus Atlee and John Evans, Judges. Judge McKean was chief justice twenty-two years. He was a member of the Congress that adopted articles of independence, and one of the signers of that instrument. In 1799, he became governor of Pennsylvania, and held it till 1808. He died in 1817, aged 83. Judge Atlee was a judge of the supreme court and president of the common pleas for Lancaster and other counties. He died at his seat on the Susquehannah, in 1793. Jonathan Dickinson Sergeant was born in Princeton, N. J., in 1746, was a delegate from New Jersey in Congress, from February, 1776, till July, 1777, when he was appointed attorney general of Pennsylvania. In 1780, he resigned this office, and returned to private practice in which he attained great eminence. In 1793, upon the occurrence of the yellow fever as a fearful epidemic in Philadelphia, he was appointed to assist the sick and relieve the poor, and while discharging this pious duty he fell a victim to the disease and died in October of that year, at the age of 47.

contemplate, with a grateful pleasure, the scars I have received in defense of a system of government, the excellence of which, though frequently before the subject of my speculation, is now brought home to my feelings.

It is difficult to account for the extraordinary mode pursued by the state of Pennsylvania, to damn my reputation, and for the asperity with which I was persecuted, on any other principle, than one, by which states, as well as individuals, are too often tempted to commit the most flagrant acts of injustice, I mean interest. The sloop *Active*, which was the object of the suit, which I was accused of unlawfully maintaining, was taken by part of the crew of the vessel, who were Americans, who rose upon the rest, and after having confined the captain and others, were bringing her into port. In this situation she was boarded by a vessel belonging to the state of Pennsylvania, and brought in, and afterwards libeled as a prize taken by themselves. The original captors, who were (some of them), born in Connecticut, my native country, with whose connections I was acquainted, applied to me for my assistance in obtaining them justice. I assisted them both with my advice, my time and my purse; and though three-fourths of the vessel and cargo were, by the lower court of admiralty for the state of Pennsylvania, adjudged to the state captors, this sentence was, by an unanimous opinion of a court of appeals, reversed and adjudged to those whom I patronized, as appears by their decree.

This, gentlemen, is my cardinal guilt; hence proceeds the vengeance of an interested government against me; hence the pain and anxiety I have suffered, in feeling the fair fabric of reputation, which I have been with so much danger and toil raising since the present war, undermined by those, whose posterity (as well as themselves) will feel the blessed effects of my efforts, in conjunction with you and others, in rescuing them from a tyranny of the most cruel and debasing nature.

With respect to the fifth charge, of appropriating the wagons of the state of Pennsylvania, when called forth upon

a special emergency, last autumn, to the transportation of private property,' etc., etc.

The evidence relative to that transaction, before the Court, will, I doubt not, justify my conduct in their opinion. It has been clearly proved by the testimony of Colonel Mitchell and Major Franks, that the wagons were supplied by the deputy quartermaster general upon a private request, and not considered as in the public service, when employed. Suppose application had been made to me, for wagons, during my command in the city of Philadelphia, for removing property belonging to private persons, which was in danger of falling into the hands of the enemy, and I found the same could be done without injury to the public, should I be justified in refusing the public assistance? Certainly not. Does then the criminality consist in removing the property, because I was interested in it? Had the supplies for the continental army been obstructed by this transaction, or had I endeavored to make it a public charge, my conduct would certainly have been blameworthy; but as it evidently appears, that neither the one or the other was the case, I flatter myself, that my conduct, instead of being condemned by this honorable Court, will be approved, and that an honorable acquittal will follow from the facts I have proved.

What shall I say of the conduct of the president and council of Pennsylvania, respecting the wagons? They first charge me with employing public wagons to remove private property, insinuating that the wagonmaster was refused payment for the hire of his wagons, and that I intended to defraud the public. It would have been but candid, had they informed the public, that Jesse Jordan the wagonmaster, had not been refused payment for the hire of his wagons, but that by their influence and advice, he had been prevented calling on me for his pay, that they might have some pretense for instituting an action and this charge against me.

In the next instance, they wrote, or caused to be wrote, a letter to Jesse Jordan, directing him to make out the account of the hire of his wagons, assuring him, that if he

charged eighty pounds for the hire of each wagon (more than double the first account which he had presented to me), they did not doubt of his recovering the whole sum, and directed him to send his account to the Attorney General, who had orders to commence an action against me for the same, which he accordingly did; and there is now an action against me, depending in one of the courts of Pennsylvania, for upwards of eleven hundred pounds, for the hire of those wagons.

Is it not very extraordinary that I should be accused and tried before this honorable Court, for employing public wagons, and at the same time, and by the same persons, be prosecuted in a civil court of Pennsylvania, for employing the same wagons as private property.

As to the sixth charge, purporting, that by my commendatory letter to General Maxwell, to grant a pass to Miss Levy to go to New York, I had violated the resolve of Congress, and usurped the authority of the state of Pennsylvania. To attempt a serious refutation, would be as ridiculous as the charge itself. Let the letter wrote on this occasion speak for itself. I kept no copy of it, but well remember the purport, which was nearly as follows:

Sir,

The bearer, Miss Levy, is a young woman of a good character, who has an aged parent that is blind, depending on her for support; she has money due her from people in New York, and wishes for a permission to go there for the purpose of collecting it, for the relief and support of her mother, who will be greatly distressed without it. I believe she will not make an ill use of a pass, if granted to her.

I am, sir,

Your humble servant,

M. Clarkson.³³

General Maxwell.

³³ MATTHEW CLARKSON was an aide-de-camp of General Arnold, and at the battle of Saratoga received a severe wound in the neck. At Philadelphia he served as provost marshal, and shared to some degree with General Arnold, the hostility of the council. On the 25th of January, 1779, he was requested to attend before the council the next day, to give such information as might be necessary, but

As to the seventh charge, of an indecent and disrespectful behavior to the council of Pennsylvania.

True it is, I refused to obey an arbitrary mandate (to render to them an account of my conduct) calculated to criminate myself. They complain, that by my refusal their dignity is wounded. Had I obeyed, soldiers and citizens might justly have said, that I had betrayed their rights, and wounded their dignity. The very demand was an insult to common sense. I beg leave to observe, that no one has a greater respect than myself for the civil authority, and no one is more convinced of the necessity of supporting it. But when public bodies of men show themselves actuated by the passions of anger, or envy, and apply their effects to sap the character of an individual and to render his situation miserable, they must not think it extraordinary, if they are not treated with all the deference which they may think their due.

It is the dignity with which an office is executed, much more than the name, that can ever secure respect and obedience from a free people, and true dignity consists in exercising power with wisdom, justice and moderation. Had I experienced this, and had any unguarded expressions escaped my pen in my letters to the president of the council of Pennsylvania, I would cheerfully, in a cooler hour of reflection, have made an acknowledgement; but they have thought proper to take vengeance for themselves. I shall therefore leave it to the impartial public of America to judge between us.

The anathema of the supreme executive council, closes with

neglected the summons. The council made complaint to Congress, and a resolution of censure was moved in that body on the 24th of February, but lost by a tie vote. They, however, decided that a letter addressed by him to the council, contained expressions indecent and improper, which Congress highly disapproved of, and resolved that they would not countenance any military officer in disrespectful conduct to the civil magistracy. There is no evidence that he was implicated in the speculations or frauds of his principal. Mr. Clarkson in after life took an active interest in benevolent enterprises, and was a vice-president of the American Bible Society. He died in New York City in 1825, aged 66.

observing, "That the discouragement and neglect manifested by General Arnod to civil, military and other characters, who have adhered to the cause of their country, with an entire different conduct to those of another character, are too notorious to need proof or illustration," etc.

I am not sensible, Mr. President, of having neglected any gentlemen, either in the civil or military line, who have adhered to the cause of their country, and who have put it into my power to take notice of them; with respect to gentlemen in the civil line and army, I can appeal to the candor of Congress and to the army, as scarcely a day passed but many of both were entertained by me; they are the best judges of my company and conduct.

With respect to attention to those of an opposite character, I have paid none but such, as in my situation, was justifiable on the principles of common humanity and politeness. The president and council of Pennsylvania will pardon me, if I cannot divest myself of humanity, merely out of complaisance to them.

It is enough for me, Mr. President, to contend with men in the field; I have not yet learned to carry on a warfare against women, or to consider every man as disaffected to our glorious cause, who, from an opposition in sentiment to those in power in the state of Pennsylvania, may, by the clamor of party, be styled a Tory. It is well known, that this odious appellation has, in that state been applied by some, indiscriminately, to several of illustrious character, both in the civil and military line.

On this occasion I think I may be allowed to say, without vanity, that my conduct, from the earliest period of the war to the present time, has been steady and uniform. I have ever obeyed the calls of my country, and stepped forth in her defense in every hour of danger, when many were deserting her cause, which appeared desperate. I have often bled in it; the marks that I bear are sufficient evidence of my conduct. The impartial public will judge of my services, and whether the returns that I have met with are not tintured

with the basest ingratitude. Conscious of my own innocence, and the unworthy methods taken to injure me, I can with boldness say to my persecutors in general, and to the chief of them in particular, that in the hour of danger, when the affairs of America wore a gloomy aspect, when our illustrious general was retreating through New Jersey, with a handful of men, I did not propose to my associates, basely to quit the general, and sacrifice the cause of my country to my personal safety, by going over to the enemy, and making my peace. I can say I never balked in the sunshine of my general's favor, and courted him to his face, when I was at the same time treating him with the greatest disrespect, and vilifying his character when absent. This is more than a ruling member of the council of the state of Pennsylvania can say, "as it is alleged and believed."³⁴

Before I conclude, I beg leave to read before this honorable Court a report of a committee of inquiry of Congress, on the charges published against me by the council of Pennsylvania, with several letters I did myself the honor to write to Congress, and a letter from their committee in answer. I do not presume to offer these as evidence, but as they show the anxiety I had to have my conduct investigated, and the reluctance of my accusers to bring matters to an issue, I think it incumbent on me as an officer, to lay them before you.³⁵

This report was never acted upon by Congress, the council of Pennsylvania having had sufficient influence and address to quash any proceedings upon it. My reputation thus be-

³⁴ Arnold here refers to a conversation alleged to have been overheard between Gen. Reed and another officer, a little before the crossing of the Delaware by Washington, in which they regarded the Continental cause as well nigh defeated, and discussed the prospect of an early return to British allegiance, as the surest way of securing personal immunities and pecuniary advancement. The story was emphatically denied by General Reed.

³⁵ The report of the committee of Congress on the charges exhibited against General Arnold by the president and council of Pennsylvania was read.

came for some time longer a sacrifice to what I charitably suppose was deemed by Congress a necessary state policy, to which individuals, however inconveniently, must sometimes, without repining, submit.

I have now gone through all the charges exhibited against me; and have given to each such an answer as I thought it deserved. Are they all, or any of them supported by truth and evidence? or rather, does not each of them appear to this honorable Court to be totally destitute of every semblance of a foundation in fact? and yet baseless as they themselves are, they were intended to support a fabric; with the weight of which, attempts were made to crush my reputation and fortunes. I allude to the preliminary resolution of the council, containing severe but general strictures upon my character and conduct; strictures of such a serious and important nature, that they themselves were sensible the public would not think them justified in making them, unless upon the most unquestionable grounds. Let them now be measured by their own standard. Had they unquestionable grounds to go upon? Why then, in opposition to every principle of candor and justice, in opposition to their own ideas of candor and justice, did they make and publish resolutions, containing censures of such a high import against me?

An artful appearance of tenderness, and regard for my services, by which the council are pleased to say, I formerly distinguished myself, is held forth in the introduction to their charges. Did they mean by this to pour balsam, or to pour poison into my wounds? I leave it to this Court, and to the world to judge, whether they intended it to balance the demerits they then urged against me, by my former good conduct, as far as it would go; or whether they designed it as a sting to their charges, by persuading the public, that my demerits were so enormous, that even the greatest and most unaffected tenderness for my character, would not excuse them in continuing silent any longer.

If, in the course of my defense, I have taken up the time of the Court longer than they expected, they will, I trust,

impute it to the nature of the accusations against me; many of which, though not immediately before you as charges, were alleged as facts, and were of such a complexion as to render it necessary to make some observations upon them; because they were evidently calculated to raise a prejudice against me, not only among the people at large, but in the minds of those who were to be my judges.

I have looked forward with pleasing anxiety to the present day, when, by the judgment of my fellow soldiers, I shall (I doubt not) stand honorably acquitted of all the charges brought against me, and again share with them the glory and danger of this just war.

January 22.

THE COURT met agreeable to adjournment. The *Judge Advocate* having stated the evidence relative to the several charges exhibited against the general, the court adjourned.

January 26.

THE JUDGMENT AND SENTENCE.

THE COURT met agreeable to adjournment, and having considered the several charges exhibited against General Arnold, the evidence produced on this trial, and his defense, are of opinion, with respect to the first charge that he gave permission for a vessel to leave a port in possession of the enemy, to enter into a port of the United States, which permission, circumstanced as he was, they are clearly of opinion he had no right to give, being a breach of article 5th, section 18th of the rules and articles of war. Respecting the second charge, that although it has been fully proved, that the shops and stores were shut by General Arnold's orders on his arrival in Philadelphia, they are of opinion, that he was justifiable in the order by the resolution of Congress of the 5th of June, 1778, and his excellency the commander-in-chief's instructions of the 18th of June, 1778; and with respect to the latter part of the same charge, the making considerable purchases while the shops and stores were shut, they are clearly of

opinion, that it is entirely unsupported, and they do fully acquit General Arnold of it. They do acquit General Arnold of the third charge. Respecting the fourth charge, it appears to the Court, that General Arnold made application to the deputy quartermaster general, to supply him with wagons to remove property then in imminent danger from the enemy; that wagons were supplied him by the deputy quartermaster general on this application, which had been drawn from the state of Pennsylvania for the public service; and it also appears, that General Arnold intended this application as a private request, and that he had no design of employing the wagons otherwise than at his private expense, nor of defrauding the public, nor injuring or impeding the public service; but considering the delicacy attending the high station in which the general acted, and that requests from him might operate as commands, they are of opinion, the request was imprudent and improper, and that, therefore, it ought not to have been made. The Court, in consequence of their determinations respecting the first and last charges exhibited against Major General Arnold, do sentence him to receive a reprimand from his excellency the commander in chief.

GENERAL WASHINGTON while detesting the vices of Arnold, admired his impetuous bravery, which had so often been crowned with success. His reprimand was as delicate and gentle as could be expected by the most sensitive mind, and was in the following words:

Our profession is the chastest of all. Even the shadow of a fault tarnishes the lustre of our finest achievements. The least inadvertance may rob us of the public favor, so hard to be acquired. I reprimand you for having forgotten, that, in proportion as you had rendered yourself formidable to our enemies, you should have been guarded and temperate in your deportment towards your fellow citizens: exhibit anew those noble qualities which have placed you on the list of our most valued commanders. I will, myself, furnish you as far as it may be in my power, with opportunities of regaining the esteem of your country.

THE TRIAL OF MAJOR JOHN ANDRÉ FOR BEING A SPY, TAPPAN, NEW YORK, 1780.

THE NARRATIVE.

Terms more soothing, says Sparks in his *Life of Benedict Arnold*, or better suited to operate on a noble and generous mind, than those employed by Washington in his reprimand of Arnold,¹ could hardly have been chosen. But they had no effect on the irritated and relentless temper of Arnold. He was equally deaf to the counsels of wisdom, the admonitions of friendship and the appeals of honor. He had already made secret advances to the enemy under a feigned name, intending to square his future conduct according to circumstances, and prepared, should the Court decide against him, to seek revenge at any hazard. He submitted to the reprimand in sullen reserve and with a pretended acquiescence. He obtained a leave of absence, during which he obtained letters from his friends asking that he be appointed to the command of the powerful fortress of West Point, the gateway of the Valley of the Hudson, which request was granted by Washington. He at once resolved on an act of treason which would, he hoped, result in the most brilliant success to himself, and at the same time be an ample revenge for his real and fancied wrongs. This was to deliver West Point into the hands of Sir Henry Clinton, the British commander; and he soon made a secret proposal to him to surrender this important post. The matter could not be satisfactorily completed by letter; a personal interview with Arnold must be had to arrange specifically the terms upon which the treachery was to be consummated, and as it was most necessary for all parties that the negotiations should be conducted with the utmost secrecy, and discretion, the person in the British army to

¹ See *ante*, p. 463.

whom the commander confided this delicate matter, was its Adjutant General, Major John André,² a young man of refined manners, of a highly cultivated mind, and of the strictest integrity.

² ANDRÉ, JOHN. (1751-1780.) He was born in London of Genevese parents and originally destined for mercantile pursuits, had been several years in the counting-room of a store in London, when he formed an ardent attachment for a young lady, which was reciprocated; but the marriage was defeated by the opposition of the lady's father. Her name was Honora Sneyd. She subsequently married Richard Lovel Edgeworth and became the step-mother of the celebrated English novelist, Maria Edgeworth. From that moment André became disgusted with his pursuits, and resolved to seek relief from his bitter associations, and dissipate the memory of his sorrows, in the turmoil and dangers of war. He joined the British Army in Canada, with a lieutenant's commission, and was taken prisoner at the capture of St. John's by General Montgomery in the autumn of 1775. He was sent with other prisoners to Lancaster, in Pennsylvania, where he remained a few months till he was exchanged. Not long afterwards he said in a letter to a friend, "I have been taken prisoner by the Americans, and stripped of everything except the picture of Honora, which I concealed in my mouth. Preserving that, I yet think myself fortunate." The picture had been delineated from the living features of the object of his affection, by his own hand.

To a graceful and handsome person, André added many accomplishments of mind and manners. He was passionately fond of the fine arts, and had attained very considerable skill in drawing and painting. A journal of his travels and campaigns in America, which he kept from the time of his first arrival in Canada, contained lively and picturesque sketches of the people, their dresses, houses, and other objects, illustrating the habits of life, customs, and amusements of the Canadians, Americans, and Indians; and also drawings of animals, birds, insects, trees, and plants, each in its appropriate colors. Landscapes, views, and plans of places were interspersed, and connected by a narrative and written descriptions. This journal was seen and perused in Philadelphia, while the British had possession of that city. To a taste for poetry he united a love of elegant letters, and his attainments in the various branches of literature were extensive. His epistolary writings, so far as specimens of them have been preserved, show a delicacy of sentiment, a playfulness of imagination and an ease of style, which could proceed only from native refinement and a high degree of culture.

These attractions, connected with an affable deportment, and the address of a perfect gentleman, gained him ready access to all circles, and won the hearts of numerous friends. A favorite in the army, and everywhere admired in the walks of social life, his merits

The dangers and difficulties of the undertaking were fully appreciated on both sides, and various expedients were proposed and partially acted upon, but without success. Finally the British commander sent the *Vulture*, a sloop of war, up the Hudson River, with André on board, in order to facilitate an interview with the American commander. A boat was sent to it by Arnold in the night, and André came on shore in his uniform, which was concealed by a cloak. An interview then took place between the two officers, but the business could not be completed, and it was thought best for André to accompany Arnold to the house of Joshua H. Smith, which had been procured for the purpose, and which was within the American lines. Here, on the following day, the arrangements were concluded, although the details have never come to light. André was supplied with papers explanatory of the military situation of West Point, which, by Arnold's advice, he placed between his stockings and feet, and was then ready to return to New York. His own desire was to be carried again on board the *Vulture*, but as some of the American shore batteries had begun to fire on it, Joshua H. Smith, in whose house André was staying, and who had assisted in bringing him ashore, refused to return again on board the *Vulture*. André submitted to the necessity of his situation and prepared to return to New York by land, exchanging his military coat for a citizen's dress, and with a passport from Arnold, he set out on his dangerous route, under the assumed name of John Anderson. It was a perilous journey but Smith accompanied him part of the way and then said good bye to him.

were soon discovered by those who had power to reward them. Unaided by any other recommendation than that of his own character, he was received into the military family of Major General Grey as aide-de-camp, soon after his release from captivity. In this station he remained till General Grey returned to Europe when he was transferred to the same post in the family of Sir Henry Clinton, who when a vacancy occurred in the office of adjutant general, by the resignation of Lord Rawdon, appointed André to fill the place at the head of the department, with the rank of major.—Chandler's *Criminal Trials*, p. 160.

The lonely traveler was nearing Tarrytown and his hopes were rising when suddenly three men with muskets sprang from the thicket, stood in his path and ordered him to stop. One of the men wore a Hessian coat and André, thinking them his countrymen, frankly informed them that he was a British officer. To his dismay he discovered that the men were Americans and that he was their prisoner.³ No offers of money, threats or entreaties could move the men. André was disarmed and searched and beneath his feet within the soles of his stockings were found papers in the handwriting of Arnold. The prisoner was taken up the river to Colonel Jameson who all unsuspecting of Arnold sent André to him with an explanatory letter, while the papers found on André he dispatched to Washington. However, before André reached West Point, Colonel Jameson became suspicious and recalled him, but the letter went on its way, reached Arnold the next morning, who, when he read that a British officer had been captured with certain papers on him which had been forwarded to Washington, rose from the breakfast table, said good bye to his weeping wife and reached the Vulture which was still on the river below the fort. A few hours later Washington arrived at West Point and at once sent officers to intercept Arnold, but it was too late and the following morning the traitor was safely landed in New York City. André finding that attempts at concealment were now futile, wrote to Washington revealing his true name and stating that he was acting under military orders.

Washington at once summoned a board of army officers composed of six Major Generals and eight Brigadiers to examine the case of Major André and to give their opinion as to the light in which it ought to be considered and the punishment which ought to be inflicted. They assembled on September 29th in the Meeting House at Tappan, and their con-

³ The names of the men were John Paulding, David Williams and Isaac Van Wert. Each was rewarded by Congress with a silver medal, and an annual pension of \$200 and the name of each was given to a county in Ohio.

clusion was that the prisoner was a spy and should suffer death. General Clinton exhausted every means to save his young subordinate. It was intimated to him that in one way only could André be saved; that he would be exchanged for Arnold. But this the British General could not in honor consent to, and after having vainly asked that he should be given a soldier's death by shooting, Major André was hanged at noon on October 2, 1780, his demeanor exciting the admiration, the respect and the sorrow of every beholder. With an easy and graceful carriage, a placid but firm and thoughtful countenance, unnerved by fear, he met his fate, exhibiting all the courage of a soldier and all the meekness of a Christian. He was buried in an open field near the spot of his execution. Forty years afterwards his remains were removed to England and deposited in Westminster Abbey close to the monument erected to his memory by his royal master.

THE TRIAL.⁴

*Before a Court of Inquiry of General Officers of the Army,
Tappan, New York, September, 1780.*

MAJOR GENERALS GREENE,⁵ *President*; LORD STIRLING,⁶ ST. CLAIR,⁷ MARQUIS LA FAYETTE,⁸ HOWE,⁹ BARON DE STEUBEN.¹⁰

BRIGADIER GENERALS PARSONS,¹¹ CLINTON,¹² KNOX,¹³ GLOVER,¹⁴ PATTERSON,¹⁵ HAND,¹⁶ HUNTINGTON,¹⁷ STARK.¹⁸

⁴ *Bibliography.* *"Proceedings of a Board of General Officers, Held by order of His Excellency General Washington, Commander-in-chief of the Army of the United States of America, respecting Major John André, Adjutant General of the British Army, September 29, 1780. Philadelphia. Printed by Francis Bailey in Market Street, 1780."

*"Andreana. Containing the Trial, Execution and various matter connected with the History of Major John André, Adjutant General of the British Army in America, A. D. 1780, Philadelphia. Published by Horace W. Smith, 1865."

This book has numerous portraits and is a limited edition. In the introduction Mr. Smith says, "The official account of the Trial of Major John André has been, I believe, printed but three times: first at Philadelphia by Francis Bailey, in 1780; again in New York, at-

September 29.

Major André being brought before the COURT,¹⁹ the following letter to it from General Washington was read by the Judge Advocate, *John Lawrence*.²⁰

"Gentlemen,—Major André, adjutant general to the British army, will be brought before you for your examination. He came within our lines in the night, on an interview with Major General Arnold, and in an assumed character; and was taken within our lines, in a disguised habit, with a pass under a feigned name, and with the enclosed papers concealed upon him. After a careful examination, you will be pleased, as speedily as possible, to report a precise state of his case, together with your opinion of the light in which he ought to be considered, and the punishment that ought to be inflicted. The judge advocate will attend to assist in the examination, who has sundry other papers, relative to this matter, which he will lay before the board. I have the honor to be, gentlemen, your most obedient and humble servant.

G. Washington."

The names of the officers composing the Board were read by the *Judge Advocate* to Major André, and the PRESIDENT informed him that various questions would be asked but that

tached to William Dunlap's Tragedy entitled André, which was performed by the Old American Company in that city, March 30, 1789; it has also been embodied in the History of West Point as a *fac simile* of the Bailey edition." The official account is that printed by order of Congress.

⁵ GREENE, NATHANIAL. (1742-1786.) Born Warwick, R. I. Was next to Washington, the greatest General of the American Revolution. Died in Savannah, Ga.

⁶ ALEXANDER, WILLIAM. (1726-1783.) Generally known as Lord Stirling because of his claim to the earldom of Stirling. Born New York City. Served in the French and Indian wars, first as commissary, then as aide-de-camp to General Shirley. Became surveyor-general and a member of the Provincial Council. Enlisted in 1775 as colonel of a New Jersey regiment, and became successively brigadier-general and major-general, especially distinguishing himself for bravery at the battle of Long Island. Placed in command of Albany in 1781, and died there January 15, 1783. One of the founders, and first governor, of King's College, now Columbia University. Published, *The Conduct of Major-General Shirley*, briefly stated (1756), and *An Account of the Comet of June and July, 1770*. See, *New Inter. Enycy. Lamb's, Biog. Diet.*

⁷ SAINT CLAIR, ARTHUR. (1734-1818.) Born in Scotland, a grandson of the Earl of Roslyn. Educated at the University of Edinburgh, and studied medicine. In 1757 purchased a commission as en-

the Board desired him to feel at perfect liberty to answer them or not, as he might choose, and to take his own time for recollection and weighing what he said. Asked whether he con-

sign and came to America with Admiral Boscawen the following year. Served with distinction at Louisburg and Quebec; resigned his lieutenant's commission in 1762 and settled in Ligonier county, Pennsylvania, where he held several important civil offices. At outbreak of Revolution joined the colonial army with rank of colonel. Raised to rank of major-general in 1777, he was placed in command at Ticonderoga, which he surrendered to Burgoyne. A court martial acquitted him of blame, but he lost his command, though continuing to serve as a volunteer. Member of the Continental Congress, 1785-1787 (its president in 1787). From 1783 to 1789, President of the Pennsylvania Society of the Cincinnati, after which he named the city of Cincinnati, Ohio, in 1790. First governor of the Northwest Territory, 1789-1802. In 1791, as commander-in-chief of the army, he was defeated in an expedition against the Miami Indians. Exonerated of blame by a Congressional committee, but resigned his commission as general. Spent the latter part of his life in poverty and obscurity. See, *New Inter. Encyc., Nat. Cyc. Amer. Biog., Sargent (W). Life of John André.*

⁸ LA FAYETTE, MARQUIS DE. (1757-1834.) Born Auvergne, France. His father was a French officer who was killed at the battle of Minden, and the son entered the army at an early age. In 1776 he offered his services to the infant Republic of the United States and fitting up a ship at his own expense he reached America and was made a member of Washington's staff and a general. He served with distinction and when peace was declared went back to France, but visited the United States in 1784 and again in 1824, when he was received with great honor and enthusiasm. He entered political life in 1787 in France and became first a member of the Legislative Assembly and after that General-in-chief of the army. The triumph of the Jacobin party overthrew him and he fled from France, was made prisoner by the Austrians until 1800, when on demand of Napoleon he was released. After the Restoration of 1814 he became Vice-president of France, and was one of the leaders of the party which overthrew Charles X. and placed Louis Phillipe on the throne. He died in Paris.

⁹ See *ante*, p. 415.

¹⁰ STEUBEN, BARON FREDERICK. (1730-1794.) Born Magdeburg, Prussia, and entered the army. In 1777 came to America and offered his services to the Washington army at Valley Forge. He was made a Major General in 1778, and took part in the siege of Yorktown. In 1780 he published a *Manual of the Army*. Died in Utica, New York.

¹¹ PARSONS, SAMUEL HOLDEN. (1737-1789.) Born Lynn, Conn. Was a member of the Connecticut Assembly for many years. Was

fessed the matters contained in the letter from General Washington to the Board, or denied them, he replied that his letter to General Washington contained the truth. The letter was then read as follows:

“Salem, 24th September, 1780.

“Sir,—What I have as yet said concerning myself was in the justifiable attempt to be extricated; I am too little accustomed to duplicity to have succeeded. I beg your Excellency will be persuaded that no alteration in the temper of my mind, or apprehension for my safety, induces me to take the step of addressing you; but that it is to rescue myself from an imputation of having assumed a mean character for treacherous purposes or self-interest; a conduct incompatible with the principles that actuate me, as well as with my condition in life. It is to vindicate my fame that I speak, and not to solicit security. The person in your possession is Major John André, adjutant general to the British army. The influence of one commander in the army of his adversary is an advantage taken in war.

made Brigadier General in 1776 and Major General in 1780. Commissioner to treat with the Indians in 1785 and 1789, and a member of the Connecticut Convention which ratified the Federal Constitution. Was the first Judge of the Northwest Territory and author of a work on the Antiquities of the Western States. Was drowned in Big Beaver River in Ohio.

¹² CLINTON, JAMES (1736-1812.) Born New York. Became a Brigadier General in 1776, and a member of the Convention that adopted the Constitution of the United States. Died in Little Britain, N. Y.

¹³ See *ante*, p. 415.

¹⁴ GLOVER, JOHN. (1732-1793.) Born Salem, Mass. Served with distinction in the war of the Revolution and was made Brigadier General in 1777. Died in Marblehead, Mass.

¹⁵ PATERSON, JOHN. (1744-1808.) Born New Britain, Conn. Member of First Provincial Congress of 1774, and of the Congress of 1775. Was made Brigadier General in 1771 and Major General in 1783. Member of the New York Assembly and Constitutional Convention, 1801. Member of Congress, 1803-1805. Died at Whitney's Point, N. Y.

¹⁶ HAND, EDWARD. (1744-1802.) Born in Ireland. Entered the Continental army early in the war, was made Colonel and later Brigadier General. Died in Rockford, Pa.

¹⁷ HUNTINGTON, JABEZ. (1719-1786.) Born Norwich, Conn. Was a Major General of Militia.

¹⁸ See *ante*, p. 416.

¹⁹ The Board was not a Court Martial but a Court of Inquiry instructed to examine and report facts and to give an opinion as to the sentence.

²⁰ See *ante*, p. 417.

A correspondence for this purpose I held; as confidential (in the present instance) with his Excellency, Sir Henry Clinton. To favor it, I agreed to meet upon ground not within the posts of either army a person, who was to give me intelligence; I came up in the Vulture man-of-war for this effect, and was fetched by a boat from the ship to the beach. Being there, I was told that the approach of day would prevent my return, and that I must be concealed until the next night. I was in my regimentals, and had fairly risked my person. Against my stipulation, my intention, and without my knowledge beforehand, I was conducted within one of your posts. Your Excellency may conceive my sensation on this occasion, and will imagine how much more must I have been affected by a refusal to reconduct me back the next night as I had been brought. Thus become a prisoner, I had to concert my escape. I quitted my uniform, and was passed another way in the night, without the American posts, to neutral ground, and informed I was beyond all armed parties and left to press for New York. I was taken at Tarrytown by some volunteers. Thus, as I have had the honor to relate, was I betrayed (being adjutant general of the British army) into the vile condition of an enemy in disguise within your posts. Having avowed myself a British officer, I have nothing to reveal but what relates to myself, which is true on the honor of an officer and a gentleman. The request I have to make to your Excellency, and I am conscious I address myself well, is that in any rigor policy may dictate, a decency of conduct towards me may mark, that, though unfortunate, I am branded with nothing dishonorable, as no motive could be mine but the service of my king, and as I was involuntarily an impostor. Another request is, that I may be permitted to write an open letter to Sir Henry Clinton, and another to a friend for clothes and linen. I take the liberty to mention the condition of some gentlemen at Charleston, who, being either on parole or under protection, were engaged in a conspiracy against us. Though their situation is not similar, they are objects who may be set in exchange for me, or are persons whom the treatment I receive might affect. It is no less, sir, in a confidence of the generosity of your mind, than on account of your superior station, that I have chosen to importune you with this letter.

I have the honor to be with great respect, sir, Your Excellency's most obedient and most humble servant,

John André, Adjutant General.

His Excellency, General Washington.

Major André stated to the COURT that he came on shore from the Vulture sloop of war the night of the 21st of September instant, somewhere under the Haverstraw mountain. That the boat he came on shore in carried no flag, and that he had on a surtout coat over his regimentals, and that he wore his surtout coat when he was taken. That he met General Ar-

nold on the shore, and had an interview with him there. That when he left the Vulture sloop of war, it was understood he was to return that night; but it was then doubted, and if he could not return he was promised to be concealed on shore in a place of safety, until the next night, when he was to return in the same manner he came on shore, and when the next day came he was solicitous to get back, and made inquiries in the course of the day how he should return, when he was informed he could not return that way and he must take the route he did afterwards. That the first notice he had of his being within any of the American posts was being challenged by the sentry which was the first night he was on shore. That the evening of the 22nd of September instant, he passed King's ferry between our posts of Stony and Verplank's points, in the dress he is at present in and which he said was not his regimentals, and which dress he procured after he landed from the Vulture, and when he was within the American post, and that he was proceeding to New York, but was taken on his way, at Tarrytown, as he mentioned in his letter, on Saturday, the 23rd of September instant, about nine o'clock in the morning.

The following papers were laid before the BOARD and shown to Major André, who confessed to the BOARD that they were found on him when he was taken, and said they were concealed in his boot, except the pass:

A pass from General Arnold to John Anderson, which name Major André acknowledged he assumed.

Artillery orders, September 5, 1780.

Estimate of the forces at West Point and its dependencies, September, 1780.

Estimate of men to man the works at West Point, etc.

Return of ordnance at West Point, September, 1780.

Remarks on works at West Point.

Copy of a state of matters laid before a council of war, by his Excellency General Washington, held the 6th of September, 1780.

A letter signed John Anderson, dated September 7, 1780, to Colonel Sheldon,²¹ was also laid before the Board, and shown

²¹ Lest it should be supposed that Col. Sheldon, to whom the above letter is addressed, was privy to the plot carrying on by General Arnold, it is to be observed that the letter was found among Arnold's

to Major André, which he acknowledged to have been written by him, and is as follows :

New York, the 7th Sept., 1780.

Sir,

I am told my name is made known to you, and that I may hope your indulgence in permitting me to meet a friend near your out-post. I will endeavor to obtain permission to go out with a flag, which will be sent to Dodd's Ferry on Monday next, the 11th, at 12 o'clock, when I shall be happy to meet Mr. B—. ²² Should I not be allowed to go, the officer who is to command the escort, between whom and myself no distinction need be made, can speak on the affair.

Let me entreat you, Sir, to favor a matter so interesting to the parties concerned, and which is of so private a nature, that the public on neither side can be injured by it.

I shall be happy on my part in doing any act of kindness to you in a family or property concern of a similar nature.

I trust I shall not be detained, but should any old grudge be a cause for it, I shall rather risk that, than neglect the business in question, or assume a mysterious character to carry on an innocent affair, and, as friends have advised, get to your lines by stealth. I am, Sir, with all regards,

Your most obedient humble servant,

John Anderson.

Col. Sheldon.

Major André observed that this letter could be of no force in the case in question, as it was written in New York, when he was under the orders of General Clinton, but that it tended to prove that it was not his intention to come within our lines.

The BOARD having interrogated *Major André* about his conception of his coming on shore under the sanction of a flag, he said that it was impossible for him to suppose he came on shore under that sanction, and added, that if he came on

papers, and had been transmitted by Colonel Sheldon, who, it appears from a letter of the 9th of September, to Arnold, which enclosed it, had never heard of John Anderson before. Arnold, in his answer on the 10th, acknowledged that he had not communicated it to him, though he had informed him that he expected a person would come from New York, for the purpose of bringing him intelligence.

²²It appears by the same letter, that Arnold had written to Mr. Anderson under the signature of Gustavus. His words are, "I was obliged to write with great caution to him; my letter was signed Gustavus, to prevent any discovery, in case it fell into the hands of the enemy."

shore under that sanction, he certainly might have returned under it.

Major André having acknowledged the preceding facts, and being asked whether he had anything to say respecting them, answered, he left them to operate with the BOARD.

The examination of *Major André* being concluded, he was remanded into custody.

The following letters were laid before the BOARD, and read—Benedict Arnold's letter to General Washington, dated September 25, 1780; Colonel Robinson's letter to General Washington, dated September 25, 1780; and General Clinton's letter, dated September 26th, 1780 (inclosing a letter of the same date from Benedict Arnold), to General Washington:

On Board the *Vulture*, Sept. 25, 1780.

Sir,

The heart which is conscious of its own rectitude, cannot attempt to palliate a step which the world may censure as wrong; I have ever acted from a principle of love to my country, since the commencement of the present unhappy contest between Great Britain and the Colonies; the same principle of love to my country actuates my present conduct, however it may appear inconsistent to the world, who very seldom judge right of any man's actions.

I have no favor to ask for myself, I have too often experienced the ingratitude of my country to attempt it; but from the known humanity of your Excellency, I am induced to ask your protection for Mrs. Arnold, from every insult and injury that the mistaken vengeance of my country may expose her to. It ought to fall only on me; she is as good and as innocent as an angel, and is incapable of doing wrong. I beg she may be permitted to return to her friends in Philadelphia, or to come to me, as she may choose: from your Excellency I have no fears on her account, but she may suffer from the mistaken fury of the country.

I have to request that the enclosed letter may be delivered to Mrs. Arnold, and she permitted to write to me.

I have also to ask that my clothes and baggage, which are of little consequence, may be sent to me; if required, their value shall be paid for in money.

I have the honor to be, with great regard and esteem,
Your Excellency's most obedient humble servant,

B. Arnold.

His Excellency General Washington.

N. B.—In justice to the gentlemen of my family, Colonel Varick and Major Franks, I think myself in honor bound to declare that

they, as well as Joshua Smith, Esq. (who I know is suspected), are totally ignorant of any transactions of mine, that they had reason to believe were injurious to the public.

Vulture, off Sinksink, Sept. 25, 1780.

Sir,

I am this moment informed that Major André, Adjutant General of his Majesty's army in America, is detained as a prisoner by the army under your command; it is, therefore, incumbent on me to inform you of the manner of his falling into your hands. He went up with a flag at the request of General Arnold, on public business with him, and had his permit to return by land to New York. Under these circumstances Major André cannot be detained by you, without the greatest violation of flags, and contrary to the custom and usage of all nations, and, as I imagine you will see this matter in the same point of view as I do, I must desire that you will order him to be set at liberty, and allowed to return immediately. Every step Major André took was by the advice and direction of General Arnold, even that of taking a feigned name, and of course not liable to censure for it.

I am, Sir, not forgetting former acquaintance,

Your very humble servant,

Bev. Robinson, Col. Loyal Americans.

His Excellency General Washington.

New York, Sept. 26, 1780.

Sir,

Being informed that the King's Adjutant General in America has been stopped under Major General Arnold's passports, and is detained a prisoner in your Excellency's army, I have the honor to inform you, Sir, that I permitted Major André to go to Major General Arnold, at the particular request of that general officer. You will perceive, Sir, by the inclosed paper, that a flag of truce was sent to receive Major André, and passports granted for his return: I therefore can have no doubt but your Excellency will immediately direct that this officer has permission to return to my orders at New York.

I have the honor to be, Your Excellency's most obedient and most humble servant,

H. Clinton.

His Excellency General Washington.

New York, Sept. 26, 1780.

Sir,

In answer to your Excellency's message, respecting your Adjutant General, Major André, and desiring my idea of the reasons why he is detained, being under my passports, I have the honor to inform you, Sir, that I apprehend a few hours must return Major André to your Excellency's orders, as that officer is assuredly under the pro-

tection of a flag of truce sent by me to him, for the purpose of a conversation which I requested to hold with him relating to myself, and which I wished to communicate through that officer to your Excellency.

I commanded at the time at West Point, had an undoubted right to send my flag of truce for Major André, who came to me under that protection, and having held my conversation with him, I delivered him confidential papers in my own handwriting, to deliver to your Excellency. Thinking it much properer he should return by land, I directed him to make use of a feigned name of John Anderson, under which he had by my direction come on shore, and gave him my passports to go to the White Plains, on his way to New York. This officer cannot therefore fail of being immediately sent to New York, as he was invited to a conversation with me, for which I sent him a flag of truce, and finally gave him passports for his safe return to your Excellency; all which I had then a right to do, being in the actual service of America, under the orders of General Washington, and commanding general at West Point and its dependencies.

I have the honor to be, Your Excellency's most obedient and most humble servant,

B. Arnold.

His Excellency Sir Henry Clinton.

THE SENTENCE.

The COURT made the following report to the Commander-in-chief, as requested in his letter, in the following words, which was signed by every one of its members.

"The Board having considered the letter from his Excellency General Washington, respecting Major André, adjutant general to the British army, the confession of Major André, and the papers produced to them, report to his excellency, the commander-in-chief, the following facts, which appear to them relative to Major André. First, that he came on shore from the Vulture sloop of war in the night of the 21st of September instant, on an interview with General Arnold, in a private and secret manner. Secondly, that he changed his dress within our lines, and under a feigned name, and in a disguised habit, passed our works at Stony and Verplank's points, the evening of the 22nd of September instant, and was taken the morning of the 23rd of September instant, at Tarrytown, in a disguised habit, being then on his way to New York, and when taken, he had in his possession several papers, which contained intelligence for the enemy. The Board having maturely considered these facts, do also report to his Excellency General Washington, that Major André, adjutant general to the British army, ought to be considered as a spy from the enemy, and that agreeable to the law and usage of nations, it is their opinion he ought to suffer death."

The sentence of the Board of officers was communicated to Major André on the day it was given; he manifested no surprise, and exhibited, during his whole confinement, a calmness of manner and a winning gentleness of deportment that excited the love and admiration of all who saw him. "I foresee my fate," he said to Colonel Hamilton, "and though I pretend not to play the hero, or to be indifferent about life, yet I am reconciled to whatever may happen, conscious that misfortune, not guilt, has brought it upon me. There is only one thing that disturbs my tranquility. Sir Henry Clinton has been too good to me; he has been lavish of his kindness; I am bound to him by too many obligations and love him too well, to bear the thought that he should reproach himself, or others should reproach him, on the supposition of my having conceived myself obliged, by his instructions to run the risk I did. I would not, for the world, leave a sting in his mind that should embitter his future days. I wish to be permitted to assure him, I did not act under this impression, but submitted to a necessity imposed upon me, as contrary to my own inclination, as to his orders."

His request was complied with, and he wrote the following letter to Sir Henry Clinton:

"Sir.—Your excellency is doubtless already apprized of the manner in which I was taken, and possibly of the serious light in which my conduct is considered, and the rigorous determination that is impending. Under these circumstances, I have obtained General Washington's permission to send you this letter; the object of which is, to remove from your breast any suspicion, that I could imagine I was bound by your excellency's orders to expose myself to what has happened. The events of coming within an enemy's posts, and of changing my dress, which led me to my present situation, were contrary to my own intentions, as they were to your orders; and the circuitous route which I took to return, was imposed (perhaps unavoidably) without alternative upon me. I am perfectly tranquil in mind, and prepared for any fate, to which an honest zeal for my king's service may have devoted me. In addressing myself to your excellency on this occasion, the force of all my obligations to you and of the attachment and gratitude I bear you, recurs to me. With all the warmth of my heart, I give you thanks for your excellency's profuse kindness to me; and I send you the most earnest wishes for your welfare, which a faithful affectionate and respectful attendant can

frame. I have a mother and two sisters, to whom the value of my commission would be an object, as the loss of Grenada has much affected their income. It is needless to be more explicit on this subject; I am persuaded of your excellency's goodness. I receive the greatest attention from his excellency General Washington, and from every person under whose charge I happen to be placed. I have the honor to be, with the most respectful attachment, your excellency's most obedient and most humble servant.

John André,

Of his captors, who were about to execute the martial law, he made but one request; it was his wish to die the death of a soldier, and he requested that he might be shot.²³

But by the customs of war, a spy must suffer death in its most ignominious form, and it was the opinion of Washington and the officers he consulted, that this case ought to form no exception.

General Clinton made great efforts to save André's life and even sent three Commissioners with a flag of truce which by the command of Washington were met by General Green, but without result. The following correspondence published by order of Congress is explanatory of this:

Headquarters, Sept. 30, 1780.

Sir,

In answer to your Excellency's letter of the 26th instant, which I had the honor to receive, I am to inform you, that Major André was taken under such circumstances as would have justified the most summary proceedings against him. I determined, however, to refer his case to the examination and decision of a Board of General Officers, who have reported on his free and voluntary confession and letters, "That he came on shore from the Vulture sloop of war, in the night of the 21st of September instant," etc., as in the Report of the Board of General Officers.

From these proceedings, it is evident Major André was employed in the execution of measures very foreign to the objects of flags of truce, and such as they were never meant to authorize or countenance in the most distant degree; and this gentleman confessed with the greatest candor, in the course of his examination "that it was impossible for him to suppose he came on shore, under the sanction of a flag."

I have the honor to be, Your Excellency's most obedient and most humble servant,

G. Washington.

His Excellency Sir Henry Clinton.

²³ See *post*, p. 484.

In this letter Major André's of the 29th of September to Sir Henry Clinton was transmitted.

New York, Sept. 29, 1780.

Sir,

Persuaded that you are inclined rather to promote than prevent the civilities and acts of humanity, which the rules of war permit between civilized nations, I find no difficulty in representnig to you, that several letters and messages sent from hence have been disregarded, are unanswered, and the flags of truce that carried them, detained. As I have ever treated all flags of truce with civility and respect, I have a right to hope, that you will order my complaint to be immediately redressed.

Major André, who visited an officer commanding in a district at his own desire, and acted in every circumstance agreeable to his direction, I find is detained a prisoner; my friendship for him leads me to fear he may suffer some inconvenience for want of necessaries; I wish to be allowed to send him a few, and shall take it as a favor if you will be pleased to permit his servant to deliver them. In Sir Henry Clinton's absence, it becomes a part of my duty to make this representation and request.

I am, Sir, Your Excellency's most obedient humble servant,

James Robertson,
Lieutenant General.

His Excellency General Washington.

Tappan, Sept. 30, 1780.

Sir,

I have just received your letter of the 29th. Any delay which may have attended your flags, has proceeded from accident and the peculiar circumstances of the occasion, not from intentional neglect or violation. The letter that admitted of an answer, has received one as early as it could be given with propriety, transmitted by a flag this morning. As to messages, I am uninformed of any that have been sent.

The necessaries for Major André will be delivered to him, agreeably to your request.

I am, Sir, your most obedient humble servant,

G. Washington.

His Excellency Lieut.-Gen. Robertson, New York.

New York, Sept. 30, 1780.

Sir,

From your Excellency's letter of this date, I am persuaded the Board of General Officers, to whom you referred the case of Major André, cannot have been rightly informed of all the circumstances on which a judgment ought to be formed. I think it of the highest moment to humanity, that your Excellency should be perfectly apprized of the state of this matter, before you proceed to put that judgment in execution.

For this reason, I send his Excellency Lieutenant General Robertson, and two other gentlemen, to give you a true state of facts, and to declare to you my sentiments and resolutions. They will set out tomorrow, as early as the wind and tide will permit, and wait near Dobb's Ferry for your permission and safe conduct, to meet your Excellency, or such persons as you may appoint, to converse with them on this subject.

I have the honor to be, Your Excellency's most obedient and most humble servant,

H. Clinton.

P. S.—The Hon. Andrew Elliot, Esq., Lieutenant Governor, and the Hon. William Smith, Chief Justice of this province, will attend his Excellency Lieutenant General Robertson. H. C.
His Excellency General Washington.

Lieutenant-General Robertson, Mr. Elliott, and Mr. Smith, came up in a flag vessel to Dobb's Ferry, agreeable to the above letter. The two last were not suffered to land. General Robertson was permitted to come on shore, and was met by Major-General Greene, who verbally reported that General Robertson mentioned to him in substance what is contained in his letter of the 2nd of October to General Washington.

New York, October 1, 1780.

Sir,

I take this opportunity to inform your Excellency that I consider myself no longer acting under the commission of Congress. Their last to me being among my papers at West Point, you, Sir, will make such use of it as you think proper.

At the same time, I beg leave to assure your Excellency, that my attachment to the true interest of my country is invariable, and that I am actuated by the same principle which has ever been the governing rule of my conduct, in this unhappy contest.

I have the honor to be, very respectfully, your Excellency's most obedient humble servant,

B. Arnold.

His Excellency General Washington.

Greyhound Schooner, Flag of Truce,
Dobb's Ferry, Oct. 2, 1780.

Sir,

A note I have from General Greene, leaves me in doubt if his memory had served him to relate to you, with exactness, the substance of the conversation that had passed between him and myself, on the subject of Major André. In an affair of so much consequence to my

friend, to the two armies, and humanity, I would leave no possibility of a misunderstanding, and therefore take the liberty to put in writing the substance of what I said to General Greene.

I offered to prove by the evidence of Colonel Robinson, and the officers of the Vulture, that Major André went on shore at General Arnold's desire, in a boat sent for him with a flag of truce; that he not only came ashore with the knowledge, and under the protection of the general who commanded in the district, but that he took no step, while on shore, but by the direction of General Arnold, as will appear by the inclosed letter from him to your Excellency. Under these circumstances I could not, and hoped you would not, consider Major André as a spy, for any improper phrase in his letter to you.

The facts he relates correspond with the evidence I offer; but he admits a conclusion that does not follow. The change of clothes and name was ordered by General Arnold, under whose direction he necessarily was while within his command. As General Greene and I did not agree in opinion, I wished that disinterested gentlemen of knowledge of the law of war and nations, might be asked their opinion on the subject, and mentioned Monsieur Knyphausen and General Rochambault.

I related that a Captain Robinson had been delivered to Sir Henry Clinton as a spy, and undoubtedly was such; but that it being signified to him that you were desirous that this man should be exchanged, he had ordered him to be exchanged.

I wished that an intercourse of such civilities as the rules of war admit of, might take off many of its horrors. I admitted that Major André had a great share of Sir Henry Clinton's esteem, and that he would be infinitely obliged by his liberation; and that if he was permitted to return with me, I would engage to have any person you would be pleased to name, set at liberty.

I added that Sir Henry Clinton had never put to death any person for a breach of the rules of war, though he had, and now has, many in his power. Under the present circumstances, much good may arise from humanity, much ill from the want of it. If that could give any weight, I beg leave to add, that your favorable treatment of Major André will be a favor I should ever be intent to return to any you hold dear.

My memory does not retain with the exactness I could wish, the words of the letter which General Greene showed me from Major André to your Excellency. For Sir Henry Clinton's satisfaction, I beg you will order a copy of it to be sent to me at New York.

I have the honor to be, your Excellency's most obedient and most humble servant,

James Robertson.

His Excellency General Washington.

New York, October 1, 1780.

Sir,

The polite attention shown by your Excellency and the gentlemen of your family to Mrs. Arnold, when in distress, demands my grateful acknowledgment and thanks, which I beg leave to present.

From your Excellency's letter to Sir Henry Clinton, I find a Board of General Officers have given it as their opinion, that Major André comes under the description of a spy. My good opinion of the candor and justice of those gentlemen leads me to believe, that if they had been made fully acquainted with every circumstance respecting Major André, that they would by no means have considered him in the light of a spy, or even of a prisoner. In justice to him, I think it my duty to declare, that he came from on board the *Vulture* at my particular request, by a flag sent on purpose for him by Joshua Smith, Esq., who had permission to go to Dobb's Ferry, to carry letters, and for other purposes not mentioned, and to return. This was done as a blind to the spy boats. Mr. Smith at the same time had my private instructions, to go on board the *Vulture*, and bring on shore Colonel Robinson, or Mr. John Anderson, which was the name I had requested Major André to assume; at the same time I desired Mr. Smith to inform him that he should have my protection, and a safe passport to return in the same boat, as soon as our business was completed. As several accidents intervened to prevent his being sent on board, I gave him my passport to return by land. Major André came on shore in his uniform (without disguise), which with much reluctance, at my particular and pressing instance, he exchanged for another coat. I furnished him with a horse and saddle, and pointed out the route by which he was to return. And as commanding officer in the department, I had an undoubted right to transact all these matters, which, if wrong, Major André ought by no means to suffer for them.

But if, after this just and candid representation of Major André's case, the Board of General Officers adhere to their former opinion, I shall suppose it dictated by passion and resentment; and if that gentleman should suffer the severity of their sentence, I shall think myself bound, by every tie of duty and honor, to retaliate on such unhappy persons of your army as may fall within my power, that the respect due to flags, and to the law of nations, may be better understood and observed.

I have further to observe, that forty of the principal inhabitants of South Carolina have justly forfeited their lives, which have hitherto been spared by the clemency of his Excellency Sir Henry Clinton, who cannot in justice extend his mercy to them any longer, if Major André suffers; which, in all probability, will open a scene of blood at which humanity will revolt.

Suffer me to intreat your Excellency for your own and the honor of humanity and the love you have of justice, that you suffer not an unjust sentence to touch the life of Major André.

But if this warning should be disregarded and he suffer, I call heaven and earth to witness, that your Excellency will be justly answerable for the torrent of blood that may be spilt in consequence.

I have the honor to be, with due respect, Your Excellency's most obedient and very humble servant,

B. Arnold.

His Excellency General Washington.

Tappan, October 1, 1780.

Sir,

Buoyed above the terror of death, by the consciousness of a life devoted to honorable pursuits, and stained with no action that can give me remorse, I trust that the request I make to your Excellency at this serious period, and which is to soften my last moments, will not be rejected.

Sympathy towards a soldier will surely induce your Excellency and a military tribunal, to adapt the mode of my death to the feelings of a man of honor.

Let me hope, Sir, that if aught in my character impresses you with esteem towards me, if aught in my misfortune marks me as the victim of policy and not of resentment, I shall experience the operation of these feelings in your breast, by being informed that I am not to die on a gibbet.

I have the honor to be, Your Excellency's most obedient and most humble servant,

John André,

Adj. Gen. to the British Army.

His Excellency General Washington.

THE EXECUTION.

October 2.

At the Dutch Village of Tappan (Orangetown), Major André was hanged at noon today. He was dressed in the uniform of a British staff officer. The particulars have been preserved by Dr. Thacher²⁴ who was an eye-witness, in these words:

"The principal guard officer who was constantly in the room with the prisoner, relates, that when the hour of his execution was announced to him in the morning, he received it without emotion, and while all present were affected with silent gloom, he retained a firm countenance, with calmness and composure of mind. Observing his servant enter the room in tears, he exclaimed, 'Leave me till you can show yourself more manly.' His breakfast being sent to him from the table of General Washington, which had been done every day of his confinement, he partook of it as usual, and having shaved and dressed himself, he placed his hat on the table, and cheerfully said to the guard officers, 'I am ready at any moment gentlemen, to wait on you.' The fatal hour having arrived, a large detachment of troops was paraded, and an immense concourse of people assembled; almost all our general and field officers, excepting his excellency and his

²⁴ Thacher's Military Journal, p. 22.

staff, were present on horseback; melancholy and gloom pervaded all ranks; the scene was affecting and awful.

"I was so near during the solemn march to the fatal spot, as to observe every movement and participate in every emotion, which the melancholy scene was calculated to produce. Major André walked from the stone house, in which he had been confined, between two of our subaltern officers, arm in arm; the eyes of the immense multitude were fixed on him, who, rising superior to the fear of death, appeared as if conscious of the dignified deportment which he displayed. He betrayed no want of fortitude, but retained a complacent smile on his countenance, and politely bowed to several gentlemen whom he knew, which was respectfully returned. It was his earnest desire to be shot, as being the mode of death most conformable to the feelings of a military man, and he had indulged the hope that his request would be granted. At the moment, therefore, when suddenly he came in view of the gallows, he involuntarily started backward, and made a pause. 'Why this emotion, sir?' said an officer by his side. Instantly recovering his composure, he said, 'I am reconciled to my death, but I detest the mode.'

"While waiting and standing near the gallows, I observed some degree of trepidation; placing his foot on a stone, and rolling it over, and choking in his throat, as if attempting to swallow. So soon, however as he perceived that things were in readiness, he stepped quickly into the wagon, and at this moment he appeared to shrink, but instantly elevating his head with firmness, he said, 'It will be but a momentary pang;' and taking from his pocket two white handkerchiefs, the provost marshal with one pinioned his arms, and with the other, the victim, after taking off his hat and stock, bandaged his own eyes with perfect firmness, which melted the hearts, and moistened the cheeks, not only of his servant, but of the throng of spectators. The rope being appended to the gallows, he slipped the noose over his head, and adjusted it to his neck, without the assistance of the executioner. Colonel Scammell now informed him that he had an opportunity to speak if he desired it. He raised the handkerchief from his eyes, and said, 'I pray you to bear me witness, that I meet my fate like a brave man.' The wagon being now removed from under him he was suspended and instantly expired."

THE TRIAL OF JOSHUA H. SMITH FOR ASSIST- ING THE ENEMY, TAPPAN, NEW YORK, SEPTEMBER, 1780.

THE NARRATIVE.

After the capture of Major André and the escape of Benedict Arnold, the commander-in-chief of the American army took decisive and energetic measures to ascertain how far the defection extended, and to punish all who had been in any manner cognizant of the traitor's designs. • It was soon proved that no just ground of suspicion could be entertained against any of the American officers, although the conduct of Major Varick and Major Franks,¹ the aides-de-camp of General Arnold, was investigated by a court of inquiry, at their own request. There was one person, however, who had been loud in his professions in favor of the cause of liberty, against whom there were violent suspicions of a want of good faith in his connection with the affair. This was Joshua H. Smith,² who went on board the Vulture sloop of war for André, and in whose house the unfortunate officer spent the night and day after it was determined not to return to the ship. Indeed, André had on a suit of Smith's clothes when he was taken prisoner. But little doubt was at that time entertained, that Smith was cognizant of the whole plot, and he was arrested at Fish-kill, in the night of the 25th of September, 1780, by Colonel Gouvion, a French officer, whom Washington sent for that purpose. He was conducted, under guard, to West Point,

¹ See *ante*, p. 438.

² SMITH, JOSHUA HETT. (1736-1818.) Born New York City. He was by profession a lawyer and was a man of substance and well connected, though members of his family were suspected of disaffection to the cause of the Colonists. His eldest brother, afterwards a High Court Justice in Canada, had been banished within the British lines at New York, and another brother was generally deemed an enemy to the revolution. Smith was appointed a delegate from the county of Orange to oppose in the Convention of 1776 the measure of independence then recommended and adopted by Congress.

where he was brought before General Washington and some of the principal officers of the army, when his account of his knowledge of and connection with the proceedings of Arnold was so confirmed, as to give strength to the suspicions that already existed in regard to him. He acknowledged that he went on board of the Vulture; and that André returned with him, and that he entertained that officer at his house and accompanied him a part of the way towards the City of New York, but he denied that he was present at any interview between Arnold and André or that he had the slightest suspicion of Arnold's plans.

Smith was sent to Tappan and kept in confinement there until tried by a Court Martial which assembled the day after the examination of André and continued by adjournment for four weeks. Among the distinguished witnesses were Lafayette, Knox and Hamilton and all the developments of the conspiracy as well as the incidents of the capture of André which had not been gone into on the trial of the British officer were brought out in a dramatic way. Smith read to the Court a long defense in which he took the ground that as a civilian and not a soldier he was not subject to a military tribunal, and he examined the witnesses with marked ability. That he aided and assisted Arnold there was no doubt; this he confessed and some facts of his conduct were never cleared up, especially his refusal to go back with André to the Vulture. The reasons he assigned were improbable and his attempts at an explanation only drew a deeper shade over his candor. But as it was not satisfactorily proved that he had any knowledge of Arnold's traitorous designs, he was acquitted by the Court.

THE TRIAL.³

Before a Court of Military Officers, Tappan, New York, September, 1780.

COLONEL HENRY JACKSON,⁴ *President.*^{4a}

³ *Bibliography.* "The testimony in the case, which was very voluminous, was written out by the judge advocate, and was transmitted, with the other papers of the court martial, to the governor of

September 21.

This Court Martial, ordered for the trial of Joshua H. Smith, assembled the day after the examination of Major André and continued for nearly four weeks through frequent adjournments.

The Judge Advocate, *John Lawrence*,⁵ laid before the court several charges against the prisoner, and produced to them certain resolutions of Congress, of the 21st August, 1776, and the 27th February, 1778, respecting the trial of inhabitants; and he desired their opinion whether they had a competent jurisdiction to try the prisoner on these charges.

Smith objected to the legality or propriety of his being tried by a military tribunal. He conceived himself only amenable to the civil authority of the state, to which he belonged, which had established the right of trial by jury in the constitution then recently established.

The COURT. The prisoner is tried by a resolve of Congress, passed in the year 1777, authorizing the commander-in-chief

New York. They have remained in the Clinton family ever since, never having been printed in a more permanent form than that of a newspaper. Many years after the trial, Smith published his narrative, of which the title page was as follows: An authentic narrative of the causes which led to the death of Major André, adjutant general of his majesty's forces in North America. By Joshua Hett Smith, Esq., counsellor at law, late member of the convention of the state of New York. To which is added, a Monody on the death of Major André. By Miss Seward. London: printed for Mathews & Leigh, 18 Strand, 1808. This work is characterized by great bitterness, and although the author evidently had before him a copy of the written testimony produced to the court at his trial, he utters innumerable assertions widely different from the testimony itself, and from his original defense. It is a curious and interesting work, as exhibiting the character and opinions of the writer, but is worthy of but little credit upon matters of fact, except where the statements are confirmed by other authority." Chandler's Am. Crim. Trials.

⁴ JACKSON, HENRY. (1747-1809.) Born Boston, Mass. Commanded the Fourth Massachusetts regiment and was Major General of Militia, 1772-1796. Died in Boston.

^{4a} The other members of the Court were: Lieutenant Colonel Hart, Major Ball, Captains Jacob Wright, Drew, Frye, Sanford, Fowle, J. A. Wright, Marshall, Chase and Tiffany.

⁵ See *ante*, p. 417.

of the army, to hear and try by court martial, any of the citizens of the United States, who should harbor or secrete any of the subjects or soldiers of the king of Great Britain, knowing them to be such, or should be instrumental in conveying intelligence to the enemy, and, if found guilty, should be condemned and executed as a traitor, assassin and spy.

Smith objected that the resolve of Congress alluded to was possibly passed anterior to the adoption of the several constitutions of the United States, when there were no legal establishments, and was introduced to supply the want of civil jurisdictions in that early stage of the war. He could not conceive how a mere resolve of Congress could abrogate a fundamental article in any of the civil constitutions of the United States; for, if so, it made the military paramount to the civil authority, and would establish, if the court were to proceed on his trial, a precedent dangerous to the liberties of the subject; that it would excite eventually the indignation of his fellow citizens, in destroying one of the established principles of liberty belonging to the subject, and the violation of the right of trial by jury, one of the principal reasons assigned by Congress for their separation from Great Britain, in the declaration of independence, as well as allowing the military an extent of power incompatible with a free government.

The COURT, after consideration, were of opinion that they had jurisdiction under the resolution of Congress of the 27th February, 1778, to try the prisoner upon one of the charges preferred against him, and as to the three others, they were of opinion that they had not jurisdiction.

The Judge Advocate, prosecuting in the name of the United States of America, then exhibited the following charge against the prisoner, namely, "For aiding and assisting Benedict Arnold, late major general in our service, in a combination with the enemy to take, kill and seize such of the loyal citizens or soldiers of these United States, as were in garrison at West Point and its dependencies."

The Prisoner pleaded *Not Guilty*.

THE EVIDENCE.

Samuel Cahoon. On the night of 21st of September, I went on board the Vulture sloop with Mr. Smith. Before that he asked me to go with him that night a piece down the river. Told him I did not want to go; he urged my going and said it was great business. I agreed to go. We went over to his brother's; consented to go to General Arnold's, and was furnished by Mr. Smith with a horse, and a paper to Major Keirce, and went off. Got to General Arnold's just before sunrise; was informed by the general that there was no occasion for an answer. Returned back, and in the afternoon General Arnold passed me, and rode towards Mr. Joshua H. Smith's house.

Mr. Smith acknowledged that General Arnold arrived at his house that afternoon.

Cahoon. Near sundown, Mr. Smith told me that the general wanted to speak with me; went up with Mr. Smith to the room where General Arnold was, who asked me to go with him a piece that night; said could not go, being up the night before, and I was afraid to go, but General Arnold urged me to go, and told me if I was a friend to my country, I should do my best; asked the general where he wanted me to go, and the general and Mr. Smith said on board of the ship in the river; that there was a man there the general wanted to see very much. General Arnold said it must be done that night; upon my saying I could not go alone, Mr. Smith desired me to go and fetch my brother; went back to General

Arnold and told him I did not want to go, that there were guard boats out; he said there was no danger; said if I did not go, he would look upon me as a disaffected man; went and fetched my brother, and we stood out a great while before we consented; at last we did, myself, Mr. Smith and my brother went to the boat, and rowed to the ship. During my conversation with General Arnold and Mr. Smith, Mr. Smith was in and out of the room; do not recollect any particular conversation passing between them, but Mr. Smith told me not to say anything to the people on board the vessel, which was General Arnold's charge likewise. We were hailed by the vessel; Mr. Smith answered "friends;" Mr. Smith went on board and stayed not longer than a quarter of an hour; he returned on board the boat with a man. We rowed on shore; landed at the Long Cove, a little below Haverstraw; heard no conversation between Mr. Smith and this person on the way ashore; sat in the bow of the boat, and they in the stern; think if there had been any I could have heard it. When we came on shore, heard the noise of a man at a bank above; Mr. Smith went up, and returned immediately. The person we brought on shore went up, and Mr. Smith stayed with us, and asked my brother and myself if we would go on board the vessel again that night; told him I was fatigued, being up the night before, and could not go. All this time the other person was not present, and I do not know where he was, but

suppose he was up against the bank, as he went that way; myself and brother then went up in the boat to Haverstraw creek, and Smith stayed on the shore with us from their first landing, except when he went towards the bank and returned in the boat with us to Haverstraw creek. From thence we went with Smith to his house, but did not see the person there that we brought on shore from the vessel. The person we brought on shore had a dark colored coat on, but whether black or blue, I did not know, as I did not take notice of it; never carried Mr. Smith on board the vessel again; did not see General Arnold at Mr. Smith's house when I returned that night. Received no reward or promise from Smith for bringing this person on shore; General Arnold promised me fifty weight of flour, which was before I went on board with Smith. General Arnold ordered us, when we went down in the boat, to take a sheep skin with us to put around our oars.

Mr. Smith. Don't you recollect my telling you, in going down to the creek, my intention in going was for the service of the country? You did tell me so. Did General Arnold persuade you a great deal to go; and did I appear anxious for your going? He did. You did not appear anxious. Whose business did you suppose it to be? General Arnold's and yours; but I did not know whose it was. I was urged very hard to go by the general.

The COURT. When you returned, did Mr. Smith tell you not to mention to anybody that you had been on board the vessel? Not that I recollect. Did

you object to going on board at first because you thought it was wrong, or because you were tired? It was because I was tired and I thought it wrong also, to go in the night at that time of the night.

Joseph Cahoon. Last Thursday night week Mr. Smith sent for me to come over to his house. When I came he said he wanted me to go with him that night down the river on board of the man-of-war as a flag on business of General Arnold; told him I was sorry I was wanted for that purpose, upon any other thing I was willing to serve him or the general. Mr. Smith asked me why, and said there was no hurt in going as it was general business; asked him whether he did not think we should be taken up by the continental water guard, he said no—for he had a pass from the general to go, and the countersign; and said the countersign was "congress," Mr. Smith said, Have you not always heard that I was a friend to the country, and did that which was always best for the country? I told him yes, and always thought he was; asked him why the flag was not sent down in the day time, as it ought to be done? He said because it was to be kept private from the inhabitants and common men. The officers, he said, knew it, and there was a man on board that the general wanted to speak to, and he must be brought on shore and carried on board again; told him I did not choose to go. He said there was no hurt in going at all, and if anything should come against me, he would defend me, and clear me from all; told him he could not clear me if there was anything bad in it. He

afterwards got up and went into the house to General Arnold. General Arnold came out soon after Mr. Smith went in, and said, I need not be afraid to go with Mr. Smith, that it must be done for the good of the country, and it was not done in private, for the officers of the ferry knew it, the captain of the water guard also, and had the countersign, and it was not a secret to any persons but the inhabitants and common men; thought at first it was not good, but thought otherwise upon the general's mentioning that it was known. Myself and brother concluded not to go; but both were afraid to tell the general of it, and did not go to him. I met Mr. Smith in the entry, he told me the general wanted to speak with me; went into his room, acquainted him I had no mind to go, as it was late, and said I would rather go in the morning. General Arnold said if I would not assist when I was required for the good of my country and Congress, he would put me under guard immediately. Mr. Smith came out and asked my brother and myself if we would have a dram, and gave us each one. The general and Mr. Smith talked together. Could not hear what they said, as they talked low. My brother, Mr. Smith and myself went down to the landing, about a half mile below King's Ferry, and passed off in the boat, it was pretty well near midnight. Mr. Smith had on a whitish coat, which I think I have seen him wear before. Mr. Smith told us that when we came on board the vessel, we had nothing to do but to stay on board the long boat, and when asked questions, to say

nothing at all. When we came to the vessel they hailed us, and Mr. Smith answered "halloo," they ordered us to come on board immediately. Mr. Smith went on board and stayed a little time, about a quarter of an hour. Mr. Smith, after a little, came on board the boat, and another man came with him, who had a dark colored coat on, which I looked upon to be a watch-coat; we rowed on shore at a place called the Long Clove, about six miles from Stony Point, where we landed, and Mr. Smith went up towards the bank, a little way from the water; heard Mr. Smith and the person in the boat talk a little on the way ashore; did not understand what they said; did not see any man by the bank; Mr. Smith stayed a little while there, came back, and the other man went up, whom I did not see afterwards. Was drowsy and had no conversation with Mr. Smith about returning to the vessel that night, neither about returning to the vessel with that man afterwards; have not seen Mr. Smith from that time until this day. General Arnold promised me fifty weight of flour for going on board the vessel, but I never saw it; Mr. Smith did not promise me anything for it. Mr. Smith, after his return, did not desire me to keep it a secret. When we came to Mr. Smith's house, after our return from the ship, saw General Arnold come out of Mr. Smith's house and go into the necessary house. He walked lame, and had on a blue coat and white breeches; am sure he was the same man who I saw before I went on the board the vessel, who was called General Arnold, as well as I can judge from my knowledge of men. Mr.

Smith gave me a sheep skin when I left his house, and carried it down to the boat, and he and myself muffled my oar with it, and my brother muffled the other; after we returned to Crom's Island, Mr. Smith told us to take the sheep-skin off from the oars, and throw the oars upon the grass.

*Colonel James Livingston.*⁶ Supposed there was an intimacy between Mr. Smith and Benedict Arnold, from the passes the former had from General Arnold. Mr. Smith was at my quarters two or three times previous to General Arnold's going off to the enemy. He produced a pass from General Arnold to pass by the guards at all times; he also had an order from General Arnold for a light boat, on the quartermaster, at King's Ferry, and General Arnold requested me to see that the quartermaster furnished him with a light boat, if there was one to be had. Mr.

Smith then informed me that he was upon a plan, in conjunction with General Arnold, to gain intelligence of the utmost importance, and that he expected to meet a gentleman for that purpose near Dobb's Ferry, but did not mention the time when he expected to meet him. He then agreed with the lieutenant of my guard boats to have a watchword, so that the lieutenant might let him pass at any time, by day or night; heard nor saw nothing of Mr. Smith until last Friday night week, just before dark. He stopped at my marquee for a few minutes; asked him where he was going. He said up towards General Arnold's. I gave him one letter to be delivered to General Arnold and another to Governor Clinton as he had informed me it was likely he would go that route; urged him to stay awhile and take supper or a drink of grog. He informed me that there was

⁶ Colonel Livingston was himself, at one time, almost suspected of being acquainted with Arnold's plans. He commanded at Verplanck's Point, and from the proximity of his post to the enemy, and several concurring circumstances, might be fairly presumed to have been either directly or indirectly concerned in Arnold's maneuvers. By a very laconic letter, Washington ordered that officer to come to him immediately. Livingston expected, at least, a severe scrutiny into his conduct, being fully aware, though conscious of his innocence, that circumstances were unfavorable. But Washington made no inquiries into the past, nor uttered a syllable that implied distrust. He told Colonel Livingston, that he had sent for him to give very special orders, to impress upon him the danger of his post and the necessity of vigilance, and to communicate other particulars, which could only be done in a personal interview. In conclusion he said it was a source of gratification to him, that the post was in the hands of an officer, whose courage and devotedness to the cause of his country, afforded a pledge of a faithful and honorable discharge of duty. Let the reader imagine the grateful emotions of Colonel Livingston, his increased esteem for his commander, and the alacrity with which, under such an impulse, he went back to his station of high trust and danger. *Spark's Life of Arnold*, 252.

a gentleman waiting for him, who had just rode on, and was in a hurry to get off. He informed me his business was very urgent; did not see the person who was with him, it being dark and he having rode forward.

Colonel Harrison (sworn). *Mr. Smith* objected to *Colonel Harrison*, and also to *Lieutenant Colonel Hamilton*, being admitted to give evidence respecting any confession that he might have made in their presence.

The COURT upon consideration decided that these officers should be admitted to give evidence upon this point.

Colonel Harrison.⁷ Was at Robinson's house on Tuesday or Wednesday last and was requested by one of the gentlemen of his Excellency's family to go into a room to hear the examination of *Mr. Joshua Smith*, the prisoner, who I understood had been apprehended the preceding night, and brought there by *Colonel Gouvion*, in consequence of orders from *General Washington*. In the room found the *General*, the *Marquis de Lafayette*, *General Knox*, *Colonel Hamilton* and *Mr. Smith*. In a little time after the general mentioned to *Mr. Smith*, that he must be apprised of what had happened and told him that he thought he had better make a candid confession of all he knew with respect to the matters that had been carrying on by *General Arnold*; he added that it might be better for him to act with openness and candor. *Mr. Smith* made

most solemn protestations of his innocence, and of his ignorance that *General Arnold* had been carrying on any matters injurious to the states; professed himself to be a warm friend, and that his person and property, or his purse, had been devoted to their service. *Mr. Smith* continued to repeat his innocence of the matters then under consideration, and made an appeal to the Almighty, who, he said, could witness the integrity of his heart. The general observed to *Mr. Smith* that he was in possession of facts and evidence, that would place his conduct in a very different point of view with respect to the matter in question. Till this period *Mr. Smith* appeared to support himself with firmness and consistency. He then told the general he would relate all he knew; on being asked whether a British officer under the assumed name of *John Anderson*, had not been brought on shore by him from the *Vulture* ship of war, he said that he had. *Mr. Smith* said he had been prevailed on, on the night of the preceding Thursday, to go on board that vessel by *General Arnold*, to carry a letter or a message to *Colonel Beverly Robinson*, and whom he expected to bring with him when he came back in the first instance, for the purpose of an interview with *General Arnold*, for intelligence of importance to the states. When on board of the vessel, it was concluded that an officer who, *Smith* said,

⁷ *Harrison's* testimony, says *Smith*, in his narrative, was imperfect on the most material points, as he detailed those parts that militated against me in support of the charge, and excluded those that favored my life. P. 133.

he only knew by the name of John Anderson, should return with him instead of Robinson. That the interview took place at the shore between Arnold and this officer. That Arnold and the person or officer whom he had brought on shore, were at his house afterwards—the same night that he furnished this person under the assumed name of John Anderson, with a coat to disguise himself, and that he had taken the uniform coat, which he, John Anderson, had on before, and retained it. That he, Mr. Smith, crossed the ferry at Stony Point on Friday evening, in order to conduct Mr. Anderson to the White Plains, on his way to New York and was stopped that night at Crom pond or near it. Mr. Smith declared that his object was to obtain intelligence for us, and assigned, upon its being observed by the general or some gentleman who was present, that the mode he had adopted appeared illy calculated for that end, as he was to procure it on board one of the enemy ships of war, that he thought it probable Colonel Robinson might be disposed to give such as would be beneficial to us, or serviceable, from a wish to have some favor, or I think, countenance shown with respect to his estate, which was in our hands. It was observed to Mr. Smith, that supposing it possible to conceive he was really serious in the matter with respect to Robinson, these motives could not exist in the case of Mr. Anderson, who had no property amongst us. Mr. Smith appeared much embarrassed, and answered that he could only say that Anderson was sent on shore instead of Robinson. Asked

why this officer, under the name of John Anderson, was not returned on board of the ship after finishing his business, Mr. Smith replied that it was because he, meaning himself, had the fever and ague so bad that he could not go on board, though he had confessed, but a little before, that he meant to proceed with him as far as the White Plains by land, or somewhere in the county in the vicinity of that place. The examination of Mr. Smith ended here, and he was remanded under guard. Wished from motives of policy as well as humanity, to make as little noise about the matter. Later I asked the prisoner whether he himself would not give an order that Captain Cearn's might get the coat of Major Arnold. Mr. Smith accordingly wrote a letter to his brother, Thomas, to deliver to Captain Cearn's of Lee's Light Horse, a uniform or regimental coat, I don't recollect which, which he would find up stairs in the drawers, at his Joshua Smith's house. Mr. Smith delivered the letter to me, which I transmitted to Captain Cearn's. Mr. Smith said that the person under the name of John Anderson, and General Arnold, were at his house the Thursday night after he had brought him on shore from the Vulture. Am positive Mr. Smith said Arnold and Anderson had an interview at the landing, and had not a doubt in my mind that they were at his house, but am not certain that Mr. Smith explicitly declared they were, though I verily believe he mentioned it.

The Prisoner. Did not General Washington first mention that this man I brought on shore

was the adjutant of the British army? I believe General Washington, when he asked you if you had not brought a person from on board the Vulture, called him an officer, or the adjutant general of the British army.

Did I not say that General Arnold assured me that Robinson was to give intelligence? You mentioned that you expected that Colonel Robinson was to come on shore from the Vulture with you to meet General Arnold. You said repeatedly and constantly, that your object was to gain intelligence which would be important and beneficial to the states; don't recollect that you mentioned that General Arnold assured you that Robinson was to give intelligence. You said that you imagined that matters were so arranged on board the vessel, that Anderson was to answer the same purposes. You were questioned about Anderson's dress and said that he had on a uniform coat, and a blue surtout or a great coat over it.

Did I assign no other reason but that of being unwell, for not returning Anderson on board the ship? To the best of my knowledge you said you could not do it, as you had the fever and ague. When it was observed that it was strange that a man was in such a situation as not to be able to go a few miles by water, and could go a long journey, or a con-

siderable distance by land, you might have added some other reasons, but if you did, I do not recollect them.

*Lieutenant Colonel Alexander Hamilton.*⁸ Was present when the prisoner made his confession before the gentlemen already mentioned by Colonel Harrison, which was substantially as follows: That he had been employed by Major Generals Howe and Arnold, for the purpose of procuring intelligence from the enemy; that General Arnold informed him of an interview he was to have with Colonel Robinson of the British army, in which he assured him he expected to derive information of importance and wished to engage Mr. Smith to go on board the Vulture sloop of war, then lying in the North river, to bring Colonel Robinson on shore for the purpose of that interview; that he gave Mr. Smith an order for a boat to execute this commission; that he went secretly and in the night on board the Vulture to the best of my recollection, with a note from General Arnold to Colonel Robinson; that his being on board was known not only to Colonel Robinson, but to the officers of the vessel; that instead of Colonel Robinson, a person under the name of John Anderson, came on shore with him; that General Arnold and Anderson were that night and the next

⁸ See 1 Am. St. Tr. 6.

"General Knox and Colonel Hamilton came, in testimony, more pointed to the exact truth of what I had declared, especially the latter, whose evidence was perfectly correct, by which was anticipated what must have been otherwise extracted in cross-examination; yet Hamilton artfully threw in a chain of reasoning, tending to prove my being in full knowledge of General Arnold's intentions." Smith's Narrative, p. 133.

day at his (Mr. Smith, the prisoner's) house; that he was an absolute stranger to the business they transacted; that he was not able to return with Mr. Anderson in the same manner he had brought him to the interview, on account of his having the fever and ague; that he therefore took a different mode and proceeded with him by King's Ferry towards the White Plains; that he left him on the road and returned himself; that either previous to his setting out, or in the course of the journey, he assisted Mr. Anderson to exchange the clothes he had for others, which he furnished, I believe he said, at the desire of General Arnold; that he understood from General Arnold, before he undertook the commission, that his (General Arnold's) hopes of procuring intelligence from Colonel Robinson were founded on Robinson's desire to make terms for the safety of his estate. Mr. Smith asserted his innocence of the transactions between General Arnold and Mr. Anderson, with very solemn protestations and appeals to heaven. Said he acted from the perfect confidence he had in General Arnold, whose rank and services to the country would not suffer him to entertain the least suspicion of his being capable of entering into a treasonable combination with the enemy. From the subsequent circumstances, this John Anderson proves to be Major André, adjutant general to the British army, who has recently suffered death.

The Prisoner. Was not my reason given for going on board of the ship in the night, and was it not that General Arnold told

me he did not wish the source of his intelligence as yet to be known to everybody? I have a faint recollection that it was.

Don't you recollect that I said I was very roughly used by the officers of the watch on board the ship? I think I do, on your first arrival, or rather on your approach.

Don't you recollect my saying that General Arnold, when he applied to me for a coat for Anderson, said he was only a merchant, and from pride had borrowed a coat from an officer in New York? I do not.

Was not my character in New York always esteemed as a warm friend to the cause of America before we quit the city, as far as came to your knowledge? Many persons esteemed you as a zealot on the popular side, though intimations of doubt have been made to me of the sincerity of your pretensions, I believe from a suspicion of your family.

Colonel Harrison (recalled). *The Prisoner.* Did you not see surprise in my conduct, on being informed that the person whom I brought on shore was adjutant general to the British army? As I observed before, you in the commencement of your examination behaved with great firmness and great consistency, but on matters being disclosed to you, and the general's telling you it would be better to make a candid and open confession, you discovered a good deal of surprise. As to the motives of your surprise I cannot undertake to say what they were.

Lieutenant Colonel Hamilton (recalled). *The Prisoner.* Don't you recollect that when I said that I had brought one Anderson

on shore, I said that I understood Anderson was to negotiate Robinson's business with General Arnold? You did profess that supposition.

Cornelius Lambert. The prisoner passed King's Ferry between daylight and dark, in company with another gentleman and a negro with him; the negro I took to be Mr. Smith's waiter, that was the week before last. Mr. Smith seemed to hurry us a good deal, and told us he would give us something to revive our spirits; do not recollect the person's name who crossed with Mr. Smith; it was between daylight and dark; he had on a large coat, dark colored, either brown, blue or black, and had on a round hat and boots; Mr. Smith and this person crossed from Stony Point to Verplank's Point.

Henry Lambert. Mr. Smith crossed King's Ferry the week before last, in company with another gentleman in the dusk of the evening; do not know the person's name nor do I recollect his dress. I steered the boat; they had horses with them; Mr. Smith seemed to be in a hurry to cross, and on the water, as we were crossing, told us he would give us something to revive our spirits, if we would row across soon; Mr. Smith had also a negro man along with him; did not take notice of the horse the gentlemen rode who was with Mr. Smith. When Mr. Smith was coming down to the ferry, he called out to Captain Cooley, and told him in three weeks' time we would be in New York. Captain Cooley answered, "I don't know;" Mr. Smith then said,

"well, let it be three months;" Mr. Smith seemed to be very lively, and in a joking humor, when he said it.

Lambert Lambert. Mr. Smith crossed King's Ferry in the evening; know not the person's name who crossed with him; neither have I seen the person since; don't recollect any conversation between Mr. Smith and the man in the boat.

Mr. Smith admitted that he crossed King's Ferry on Friday evening the 22nd day of September last from Stony Point to Verplank's Point.

William Van Veart confirmed the last two witnesses and so did *Benjamin Acker*.

William Jameson. On Friday evening at dusk, the 22nd day of last month, Mr. Smith came to my tent, at King's Ferry, on Stony Point side, after sundown, with a gentleman in company and a waiter; the gentleman rode a little past the tent and Mr. Smith made a halt. There were some gentlemen sitting in the tent, who handed him a bowl of liquor which they had been drinking out of upon which Mr. Smith dismounted his horse and handed the bowl to me, and desired I would fill it, which I did. As I handed him the liquor again, Mr. Smith spoke to Mr. Cooley, and said, in three weeks time we should be all in New York. Mr. Cooley made answer, "sir, I don't know," upon which Mr. Smith said, "let it be three months." Mr. Smith, upon this, took his horse and went off down to the ferry stairs. The person with Mr. Smith had on a flopped hat and a great coat, the color I cannot recollect; did not know the

person's name, neither have I seen him since to know him.

William Cooley. Three persons, one of whom was Mr. Smith, came riding down to King's Ferry, on the Stony Point side, on Friday the 22nd day of last month, about dark; there were some of Colonel Livingston's officers with me in the tent. Mr. Smith came riding along, and when he came opposite the tent, the officers hailed him and put out the bowl to him, and asked him if he would not drink; he said, yes; the other persons kept riding along; there was nothing in the bowl; Mr. Smith got off his horse and called for a nip of grog and drank. They were joking together, and Mr. Smith said to me, "What do you think, Daddy Cooley, or Captain Cooley, or something to that purpose, of being in New York in three weeks' time?" Upon that the gentlemen officers laughed a little. I said, "not, I am afraid Master Joseph," or something to that purpose. "Well," said he, "let it be three months, then." I just drank, the officers being then joking and laughing together, and Mr. Smith went off; did not see the persons who went down, to know them, nor heard their names mentioned; neither did any person ask about their names; no person asked Mr. Smith where he was going, or what his business was; neither did he mention it.

The Prisoner. What was my political character in New York? I always looked upon you as a good and faithful subject to America; have seen you strip and fight several times in New York, and once with the mate of the Asia man-of-war, about America.

Have seen you wrangle with many men who opposed the American cause in New York.

What have you thought of my political character since we have left New York? Have always thought you a hearty man for America, and never looked upon you in any other light until this very time, and how it is now, I know not; believe the whole neighborhood at Haverstraw, where you live, look upon you as a hearty friend to America, but we do not look upon the rest of your brothers to be anything to the cause of America.

Captain Ebenezer Boyd. Last Friday, a week ago, between eight and nine at night, the sentry stopped Mr. Smith, the prisoner, another person, and a negro with him. When the sentry hailed them, they answered, his friends. The sentry ordered one to dismount; Mr. Smith dismounted and spoke to the person who was with him to hold his horse, and Mr. Smith advanced till he came near the sentry. Mr. Smith asked who commanded the party; the sentry said Captain Boyd; upon that I was called for. Mr. Smith came to me, upon my calling for him; asked him who he was; he told me his name was Joshua Smith, and that he had a pass from General Arnold to pass all guards; asked him where he lived, or where he belonged; he told me he lived in the white house on the other side of King's Ferry; asked him what time he crossed the ferry; he said about the dusk of the same evening; asked him how far he was bound for, and where to; he told me he intended to go that night as far as Major Strang's; told him Major Strang was not

at home, and he spoke something of going to old Colonel Gil Drake's, as he was an old acquaintance of his; told him he did not live where he was used to, but had moved to Salem; told him about his saying he was going to Major Strang's, that his lady might be in bed, and it would incommode her much, likewise I desired to see Mr. Smith's pass, and went into a little house close by there and got a light; found that he had a pass from General Arnold to "pass all guards to the White Plains and return, being on business of importance." He told me he was a brother of William Smith, in New York, though very different in principle, and that he was employed by General Arnold to go with that gentleman, meaning the person who was with him, to get intelligence from the enemy, that they expected to meet a gentleman at or near the White Plains for the same purpose. I advised Mr. Smith to put up there, at one Andreas Miller's, close by where we were, and so start as soon as it was light; that riding in the night would be dangerous when they got below Croton river from the cowboys. Mr. Smith made answer that he would speak to his partner; they conversed together, they spoke low. Mr. Smith told him he thought it would be rather best to put up, and said he thought they might be interrupted; upon that they concluded to turn back to this house, to put up. Mr. Smith then asked my opinion about the roads, which would be the safest

to the White Plains, and not fall into the hands of these cowboys or refugees; gave him my opinion that the safest road would be to go by North Castle church, and by Wright's mills, by reason if they went to Tarrytown road, they would fall into the lower party's hands—these cowboys⁹—likewise advised him to call upon Captain Delavan next morning pretty early. Mr. Smith asked me if I thought that Captain Delavan would assist them with an escort of two or three horses; told him I did not doubt but that he might when he came to understand what his business was. They went back towards Andreas Miller's, which was the last I saw of them that night. asked Mr. Smith what gentleman it was who was with him. Mr. Smith said he was a gentleman that General Arnold had in his employ, and told me his name was John Anderson.

(Two permits were shown to *Captain Boyd*, one dated Headquarters, Robinson's House, September 20, 1780, and the other dated Headquarters, Robinson's House, September 22, 1780, signed B. Arnold, M. General, neither of which Captain Boyd thought was the pass Mr. Smith showed him. Mr. Smith acknowledged that the permit dated September 22nd, 1780, was the one he showed Captain Boyd. The other not being proved or acknowledged, was withdrawn.)

The Prisoner. What political character does Major Strang bear in that country? He is allowed to be as good a man as any

⁹ The cowboys were a set of people, mostly if not wholly refugees, belonging to the British side, and engaged in plundering cattle near the lines, and driving them to New York.

we have there, in his attachment to America.

What political character did Mr. Gil Drake bear, who lived formerly near Crom pond? His former character was that of a very warm whig.

Did I not appear pleased with your proposal of going to Captain Delavan's? You made no objections against going there to me, and told me you would call upon him the next morning, which I expected you would, from what you said.

Don't you recollect your mentioning to me that Captain Delavan was a warm friend to the country? I do.

Major Burroughs. Last Friday, a week ago, between sundown and dark, was overtaken on the road about three-quarters of a mile from Stony Point by the prisoner, and another gentleman and a negro boy. Mr. Smith said, "how do you do, Captain Livingston?" Told him he was mistaken; on that he stopped and said, "how do you do, Major Burroughs?" Rode up between the gentleman who was with Mr. Smith, which gentleman is the same man who has been proved since to have been adjutant general of the British army. Mr. Smith told me he was going for Mrs. Smith and the ladies. to West Point, and should be happy to see me at tea the next afternoon. Mr. Smith then turned about his horse, rode off pretty fast; I told him I thought it rather late, and he said he had business. The gentleman had a round hat on, and a blue coat or cloak, the cape of which was buttoned up tight round his neck, and the other part was also buttoned.

John Paulding. Myself, Isaac Van Veart, and David Williams were lying by the side of the road, about a half a mile above Tarrytown, and about fifteen miles from King's bridge, on Saturday morning between nine and ten o'clock, the 23rd of September, last. We had lain there about an hour and a half, as near as I can recollect, and saw several persons we were acquainted with, whom we let pass. Presently, one of the young men who were with me said, there comes a gentlemanlike looking man, who appears to be well-dressed, and has boots on, whom you had better step out and stop, if you don't know him. On that I got up and presented my firelock at the breast of the person, and told him to stand, and then I asked him which way he was going. Says he, Gentlemen, I hope you belong to our party. I asked him what party; he said, the lower party. Upon that I told him I did. Then he said, I am a British officer out of the country, on particular business, and I hope you won't detain me a minute; and to show that he was a British officer he pulled out his watch, upon which I told him to dismount. Upon that he said, My God, I must do anything to get along; seemed to make a kind of a laugh of it, and pulled out General Arnold's pass, which was to John Anderson to pass all guards to the White Plains, and further. Upon that he dismounted, and says he, Gentlemen, you had best let me go, or you will bring yourselves in trouble, for by your stopping of me you will detain the general's business, and said he was to go to Dobb's Ferry, to meet

a person there on the general's business. Upon that I told him I hoped he would not be offended, and told him we did not mean to take anything from him; that there were many bad people going along the road, and I did not know but perhaps he might be one; and I asked him if he had any letters about him. He made answer. No. Upon that, myself, or one of my comrades, though I think myself, told him to pull off his clothes, which he did. We searched his clothes, but could find nothing, and I told him to pull off his boots; he rather seemed backward of pulling them off; however, he pulled off one of them, and I felt at his foot, where I felt the papers in his stocking, under his foot. Then I told him to pull off the other boot, and when the other boot was off I found other papers in his stocking, under his foot. Then I looked on the back of the papers, and I saw what the contents of them were, and I said to the young fellows who were with me, this is a spy. One of

the young fellows who were with me asked him if he would give us his horse, saddle, and bridle, and watch and a hundred guineas if he would let him go. He made answer, Yes, and whatever sum of money you will mention, or quantity of dry goods. And then I made answer. No, by God, if you would give us ten thousand guineas, you should not stir a step. One of the young fellows winked to me, who had a mind to find out a little more, and I made answer to the lads who were with me to come along, for I would have nothing more to say to him. We asked him some questions as we were going along the road, and he begged we would ask him none till he came to some officers, and then he would reveal the whole. We carried him to Colonel Jameson, and there he took him into his custody, and I have not seen him from that time until I saw him the other day. I asked him his name, and he told me it was John Anderson.

Sundry papers of the following import were produced to the COURT and shown to *Paulding*, to-wit, a paper containing artillery orders at West Point, September 5, 1780—a paper containing an estimate of the force at West Point and its dependencies, September 13, 1780—a paper containing an estimate of men to man the works at West Point, and in the vicinity, September, 1780—a paper containing a return of ordnance at West Point and its dependencies, September 5, 1780—a paper containing remarks on works at West Point, indorsed, “a copy to be transmitted to his Excellency, General Washington,” September, 1780—and a paper containing a state of matters laid before a council of war, held in Camp Bergen county, September 6, 1780: present, the commander-in-chief—indorsed “copy of a council of war, held September 6, 1780.”

Paulding. To the best of my knowledge, the papers now shown me are the papers I found on that person when I took him.

Anderson had a kind of a purple claret-colored coat on, the button-holes of which were laced, nankeen breeches and waistcoat

on, and a flannel waistcoat under his waistcoat, and had a round hat on; also a blue-colored overcoat. He is the same person who suffered death on Monday last, as being the adjutant general of the British army.

The COURT. When he pulled out the watch, did he offer it to you as a present, or pull it out as a signal? As a signal that he was a British officer, as I then thought. When pulling out his pass from General Arnold, what was the reason you did not let him go? Because he said before he was a British officer. Had he pulled out General Arnold's pass first, I should have let him go. How long did the person under the name of John Anderson say he had been out from New York? Four days, and had not been above Pine's bridge, and that a man brought the letters and papers to him there, but he did not know him.

David Williams. Myself, Isaac Van Veart, and John Paulding were living in the bushes, in the morning, about nine or ten o'clock, on Saturday, the 23rd of September, last, as near as I can recollect, about a half a mile, as near as I can recollect, above Tarrytown, on the east side of the North River. Several persons came along whom we knew and let pass, and presently came along a person whom we told Mr. Paulding to stop; he was a gentlemanlike man and had boots on. Mr. Paulding stepped out, and presented his piece to his breast, and bid him stand, which he did. The person said, Gentlemen, I hope you belong to our party. Mr. Paulding made answer. What party? he said, the lower party, which Mr. Paulding told

him we did. The person said, I am glad to see you, and said, I am an officer in the British service, and have now been on particular business in the country, and I hope you will not detain me; and for a token to let us know that he was a gentleman, he pulled out his watch. Mr. Paulding told him to dismount, on which the person found we belonged to the upper party; he said, My God, I must do anything to get along; on which he pulled out General Arnold's pass and gave it to Mr. Paulding, who read it, on which Mr. Paulding told him to dismount; and the person said he was to pass down as far as Dobb's Ferry, and was to meet another gentleman there, and was to get intelligence for General Arnold; he told us we would bring ourselves in trouble if we did not let him go. We told him there were many bad fellows traveling the road, and we did not know but he was one of them, on which we took him in the bushes and ordered him to pull off his clothes, which he did; but on searching him narrowly, we could not find any sort of writing. We told him to pull off his boots, which he seemed to be indifferent about, but we got one boot off; and searched in that boot, but could find nothing, and we found there were some papers in the bottom of his stocking next to his foot, on which we made him pull his stocking off, and found three papers wrapped up. Mr. Paulding looked at the contents, and said he was a spy—upon which we made him pull off his other boot, and there we found three more papers at the bottom of his foot within his stocking, upon which we made

him dress himself, and I asked him what he would give us to let him go; he said he would give us any sum of money. I asked him whether he would give us his horse, saddle, bridle, watch and one hundred guineas, upon which he said yes, and told us he would direct it to any place, even if it was that very spot, so that we could get it. I asked him whether he would not give us more; he said he would give us any quantity of dry goods, or any sum of money, and bring it to any place that we might pitch upon, so that we might get it; upon which Mr. Paulding answered, No, by God, if you would give us ten thousand guineas you shall not stir one step; on which I asked the person who had called himself John Anderson if he would not get away if it lay in his power, on which he answered me, yes, he would. I told him I did not intend he should, and carrying him along, we asked him a few questions, and we stopped under a shade: he begged us not to ask him any

questions, and said when he came to any commander he would reveal all. We carried him on and delivered him to Colonel Jameson, and I never saw him from that time until when he was executed here, that I remember; and I think the man, to the best of my knowledge, if I recollect right, who was executed on Monday last, as being adjutant general to the British army, was the very man whom the persons I have mentioned and myself took, as I have mentioned before. He told us his name was John Anderson, when he pulled out his pass to show us. He had a blue overcoat on, and a tight body coat that was a kind of a claret-color, though rather a deeper red than claret—the button-holes were laced with gold tinsel, and the buttons drawn over with the same kind of lace—a round hat and nankeen waistcoat and breeches, and under his waistcoat was a flannel waistcoat, and under his breeches was a pair of flannel drawers—he had a pair of boots and thread stockings on.

The papers shown to *Mr. Paulding* were shown to *Mr. Williams*; he said that the paper containing an estimate of men to man the works at West Point and in the vicinity, September, 1780, and the paper containing a return of ordnance at West Point and its dependencies, September 5, 1780, were two of the papers which he and the persons who were with him found on the person whom they took, as before mentioned, under the name of John Anderson, as he saw Mr. Paulding open them; the others he did not recollect to have taken notice of.

The papers that were shown to Mr. John Paulding were shown to *Colonel Tilghman*, and he was asked whether, from the knowledge he had of Benedict Arnold's writing, he believed these papers were written by him.

Colonel Tilghman. The pass

was certainly written by Benedict Arnold, late major general in our service. The body of the paper indorsed Artillery orders, September 5, 1780, containing artillery orders at West Point, and the indorsements were certainly written by him. The name

at the bottom I am not certain of. The paper, being an estimate of the force at West Point, and its dependencies, was written by General Arnold, as well as the indorsement; the paper being an estimate of men to man the works at West Point, and in the vicinity, with indorsement, was also written by him. The paper containing a return of ordnance at West Point and its dependencies, was also written by him; the paper containing remarks on works at West Point was also written by him; the paper indorsed Copy of council of war, held September 6, 1780, containing a state of matters laid before a council of war, September 6, 1780, by his Excellency, General Washington, was also written by him; the paper containing the names of sundry persons was written by him.

*Marquis de la Fayette.*¹⁰ When Mr. Smith was put in the room at Robinson's house, it was in the morning, the day after Arnold had escaped to the enemy; there were present General Washington, General Knox, Lieutenant Colonel Hamilton, Colonel Harrison and myself; he began by making strong assur-

ances of his candor, and other assurances. The witness gave a similar description to that of *Colonel Hamilton*, and continued: He really told the whole of the story himself freely, except the changing of the coat, and I thought he was not candid in relating the reasons which prevented his returning by water on board the *Vulture*. Think Mr. Smith said that General Arnold asked him for a coat to disguise this Mr. Anderson, but, however, do not recollect it clearly.

The Prisoner. Did I not say, when I said that General Arnold asked me for a coat for this Mr. Anderson, that General Arnold said he was only a merchant, and from false pride had borrowed a British uniform coat? You may have said so, but I don't recollect it; it is true I was not attending during the whole time, there being many questions asked which I do not remember. Did you not hear me expostulate with his Excellency about the manner in which I was taken, and brought down to Robinson's house? I did.

Did you not see me the Sunday evening at General Scott's at Fishkill, preceding the Tues-

¹⁰ The prisoner seems to have been very much annoyed at the testimony of La Fayette, and speaks of him with great bitterness. "He delivered his evidence," says Smith, in his narrative, "with acrimonious severity, and malignant bitterness: he asserted as part of my declaration to General Washington matters that I could not have mentioned; and had my life, or that of a hundred others, depended on his credibility before an ignorant court-martial, all would have been forfeited. I had paid particular attention to the testimony of General Knox and Colonel Hamilton, in my notes taken on their evidence; and in my cross-examination of the marquis, I applied their answers and remarks to his recollection, which did not a little embarrass him. I could plainly perceive the court-martial were sensible that he was mistaken; and I most sincerely hope he erred from ignorance of the true import of the English language."

day morning I was brought to Robinson's house? I was told by his Excellency's family, or some other officer, that you had been there, but do not recollect to have seen you myself. Did you think, from the whole of my conduct when before General Washington, when interrogated, I discovered a disposition to declare all I knew about this matter? Your omitting the circumstance of the changing of the coat, and the reasons you gave for not returning on board the *Vulture* by water, in the same way that you came, led me to believe that you did not mean to be candid; I made you that observation at the time. Do you recollect, in the course of the examination, that Mr. Smith was asked how he could reconcile Mr. Anderson's coming on shore in the room of Robinson, from the *Vulture*, to treat of matters relative to Robinson's estate; if you do, what was Mr. Smith's answer? I recollect the question except that part which relates to the estate; I don't recollect the answer.

*Brigadier General Knox.*¹¹

Was present at Robinson's house the morning of the 26th of September, last, with his Excellency, when Mr. Smith was brought in. Mr. Smith made great protestations of his attachment to the liberties of America, that what he had done he conceived to be for the public good, that he should, in a candid manner, relate every circumstance that he was master of. (Here the witness described the scene.)

Mr. Smith. When his Excellency informed Mr. Smith that

Major André, adjutant general of the British army, was taken, did Mr. Smith say that he knew such a person? Mr. Smith answered that he did not. Did he discover any marks of surprise, when he was informed that John Anderson, whom he brought on shore from the *Vulture*, was adjutant general of the British army? I did not discover any marks or change in his features or complexion. Do you recollect, in the course of the examination, that Mr. Smith was asked how he could reconcile Mr. Anderson's coming on shore in the room of Robinson, from the *Vulture*, to treat of matters relative to Robinson's estate; if you do, what was Mr. Smith's answer? I do not, for I conceived that Mr. Smith thought the intention of Robinson coming on shore was to give intelligence as well as Anderson. Did Mr. Smith say that he gave Mr. Anderson a coat of his own to change his dress, at the instance of General Arnold? I do not recollect, that it was at the instance of General Arnold, but that it appeared a matter of evident propriety to conceal him from the country people, who, Mr. Smith observed, ought not to be acquainted with these things; by these things he meant the mode of obtaining intelligence. Did Mr. Smith mention where Mr. Anderson was going at the time he left him? Mr. Smith conveyed the idea to us, that he fully understood Mr. Anderson, when he left him, was going to New York, for which purpose he had General Arnold's pass. Did Mr. Smith mention any information

¹¹ See *ante*, p. 415.

that General Arnold had received from this Mr. Anderson, or that General Arnold told him that he had received from him? Not a word. He said the conversation was totally unknown to him. I don't remember that the question was asked him, whether General Arnold had informed him of the intelligence he had received. Was this confession from Mr. Smith easily obtained from him, or did he discover a backwardness to make any? I think easily, as to the general matter; the particulars of the coat, the carrying the breakfast and dinner, the being obliged to lodge at Crom pond, were drawn from him by questions; the answers to these questions were readily made. Did General Washington, or either of the gentlemen who were present at Mr. Smith's examination, inform Mr. Smith that they were acquainted with his conduct, before he had an opportunity of giving this relation? Yes. Did he appear to be much embarrassed when his Excellency, or one of the gentlemen present, acquainted him that he was acquainted with his conduct? There was an embarrassment, but I knew not what cause to attribute it.

Did Mr. Smith, previous to his entering on his confession, make solemn protestations and appeals to heaven of his innocence and ignorance of General Arnold's criminal designs or intentions? In the course of Mr. Smith's examination he made very solemn protestations that he believed General Arnold was acting for the good of the country, or he should not have assisted him. Can you inform the court the time General Arnold

went off to the enemy, and the time Mr. Smith was taken up? General Arnold went off to the enemy about ten o'clock in the morning of Monday, the 25th of September last, but General Washington did not know it until four o'clock in the afternoon of that day. Colonel Gouvion was sent from Robinson's house to Fishkill, where it was understood Mr. Smith was, about ten o'clock that evening, to apprehend Mr. Smith; Colonel Gouvion returned before day, and Mr. Smith arrived between seven and eight o'clock on Tuesday morning under guard. Did you see me at Fishkill the Sunday preceding the Tuesday I was brought to Robinson's house? I saw you there that evening at General Scott's house, in company with Colonel Hawk Hay; General Washington was in company no part of the time I was with you, though he was in the house. Did my behavior that evening indicate a knowledge of any transaction that was injurious to my country? No—you related a circumstance of the Vulture's being removed by some of our artillery firing on her, and that General Arnold was at your house, and was looking out of the window at that time, which circumstance, combined with others, was the cause of your being apprehended afterwards. The firing, it appeared, was just at daylight of the 22nd of September last, the morning succeeding the night you were on board the Vulture.

The COURT. Did Mr. Smith mention the names of the persons who carried him on board? He did not—the question I believe, was not asked him, as it was expected that the names

would have been found by the person superintending the boatmen at the ferry, as it was known that an order had been given by General Arnold to that person to supply Mr. Smith with a boat at any time he should call for it. Was General Washington at Fishkill when he heard of General Arnold's going off to the enemy? No—he was at Robinson's house, and the matter was

not generally divulged until the evening.

Colonel Hay. The prisoner was at my house. Had a conversation with Smith upon the subject of his arrest. The latter protested solemnly, that the only views he had in going on board the Vulture, and bringing Anderson on shore, was to gain intelligence of importance and serve his country.

The *Judge Advocate* here laid before the court certain papers which the prisoner admitted he once had in his possession, and the case on the part of the prosecution was closed.

THE EVIDENCE FOR THE PRISONER.

Jonathan Lawrence. I know but little of Mr. Smith's political conduct while in New York, but it appeared to me his general character was in favor of the country. At Dobb's Ferry I remember seeing him pass and repass as one of the convention of the state of New York. The convention was then sitting at Harlem. I was one who then guarded the ferry to examine passengers, and on examining him he produced his credentials of being one of the convention. His general character has been that of a friend to the country, and from several conversations I have had with him within this twelve months he appeared to me to be so.

Jonathan Holcomb. Mr. Smith having desired me to purchase him two cattle in New England; on my return with the cattle, which was on Friday, the 22nd September last, about four or five o'clock in the afternoon, I called upon Mr. Smith at his house and told him I had, in the droves back, his beeves coming

on, and desired him to go into the road and see them. He told me that I might turn them into the pasture, that he would take them as I had purchased them, and not look at them. I insisted that he should go and look at them, and that if he was not pleased with them I would drive them on and receipt them. Mr. Smith declined going with me, and gave me for reasons, that he had been up the last night with a gentleman from New York at General Arnold's desire, to endeavor to procure a line of communication from New York to General Arnold, as we had had no news from there for some time, and the gentleman was then in his house, and Mr. Smith told me he expected the next morning to go with him to General Arnold's, and from there, if he went with him, for he appeared not determined to go, to Fishkill to his wife. The reason of his going to Fishkill was to get the keys from his wife, to get money to pay me for the beef.

The Prisoner. Did I make a

secret of having a gentleman from New York at my house? You did not—you spoke of it frankly to me.

THE COURT. Did Mr. Smith inform you that General Arnold had had an interview with this gentleman at his house? They had an interview there the night before, as I understood Mr. Smith.

THE COURT. Did you understand from Mr. Smith that he was present at the interview of General Arnold with the gentleman from New York? I understood he was present, and that they had been in council together to procure a line of intelligence.

The Prisoner. Did I tell you I was present at the interview? No—but from what you said I conjectured so.

Colonel Hay (recalled). *The Prisoner.* Do you remember asking me, on the road from Fishkill to Robinson's house, if I had ever wrote any treasonable letters to New York? I did ask you if you had wrote any treasonable or any other letters privately to New York—you said you had not. What was your reason for asking me this? Colonel Gouvion informing me that there were persons taken up, that would prove you held a traitorous correspondence with the enemy. Did I not, on the road, complain much of my being taken in such a manner as I was, as I was conscious of no evil design against the country? You did complain of the manner of your being taken and carried down, and said you thought yourself exceedingly ill used, after all your services to the country, and thanked God you were conscious of having done nothing that

could deserve such treatment, and when you got to headquarters, said you would be very high about your treatment. Could you collect from my conduct, when first apprehended at Fishkill, any behavior in me, which conveyed to you an idea of my having done anything of a criminal nature? I did not, for you ordered your boy to follow you with a horse down to Robinson's, for you said you expected to return the next morning. Were you present at a conversation which passed between Colonel Hamilton and myself at Robinson's house, after my examination before General Washington? I was present at a conversation between you and Colonel Hamilton, but I do not know whether before or after your examination before General Washington. Don't you recollect my telling Colonel Hamilton, when pressed by him to inform of all I knew of Arnold's designs, that I had already told General Washington all I knew? I do recollect you was pressed by Colonel Hamilton to tell all that you knew, and you said you had already told all that you knew, but I do not recollect you said, to General Washington. Colonel Hamilton, to induce you to tell all you knew, and to bring out the accomplices, promised to make use of his influence to get you a discharge, but said he was unauthorized to make such a promise, but he did it of his own accord. Do you think, from the confidential manner in which I related my transactions with General Arnold to you on the road, in order to obtain your opinion that if there had been anything more in the compass of my knowledge, as far as my agency

in this business extended, I should not have informed you of it, in order to obtain your advice? I must confess I had some doubts about me that you had not told me the whole affairs, but after I was permitted to see you in Robinson's house, my begging of you for God's sake, for your wife's sake, and children's sake, to accept of Colonel Hamilton's promise, and divulge the whole secret, by your solemn appeals to the Almighty that you had told all you knew, and knew no more—I then believed that you had told the whole, and if you had known anything else I certainly should have got it out of you then. Do you recollect my telling Governor Clinton, that Sir George Rodney had detached six ships of the line, as a reinforcement to Admiral Greaves? I do, and also recollect your mentioning it at Dr. McKnight's, the night we supped in company with General Knox. This circumstance I forgot in my former examination.

The Prisoner. Please to relate to the court all you know of my political conduct in New York before our leaving it, and since, to this time, and what offices I filled in the state. Your character at New York stood very high as a whig. I have often heard you blamed for being too warm, and your running yourself into many imprudences, by your intemperate zeal. I remember, on the 6th of March, 1775, when the whigs and tories turned out, that you was extremely active on the whig side, and was the first person that introduced the bludgeons to the whigs, to knock the tories in the head, when they opposed a measure the whigs wanted to prosecute. Ever since your

living in the country, you have been active in the American cause, and I had never reason to doubt your attachment. I always found you willing to turn out with the militia, and do everything in your power to promote the public good. You have been a member of the sub-committee of the county, and member of the provincial convention at the time independence was declared. In July, 1776, two ships and three tenders came up to Haverstraw, and attempted to land some men to carry off some stores. They came so much on a surprise, that the militia could not be collected. Only thirteen, you being one of the thirteen, went down to the landing, and notwithstanding the three tenders kept a continual firing, the thirteen men beat off five or six boats, crowded with men, and saved the stores.

Major Kierce. On 21st September last, General Arnold told me, when his barge returned from the continental village, with a barge that he sent for, to send it into Haverstraw creek, and to let him or Mr. Smith know by express by land, that the barge was sent into Haverstraw creek. Wrote a line to General Arnold, informing him that the barge was sent into the creek, and my express met the boy from General Arnold to me, and gave him my note, which was the reason I did not receive General Arnold's note to me. General Arnold informed me the barge was for Mr. Smith to go down the river, to get some intelligence in favor of America.

The Prisoner. Did you ever apply to me for money for the public use, and what station did you act in at the time? I ap-

plied to you last summer for money, being in great want of it to forward public despatches to and from the eastward, and you let me have one thousand dollars, and told me you could not let me have any more at that time, and you should not want it before the fall, when you should want it to purchase some salt. I acted as quartermaster at King's Ferry at the time. Mr. Henry, who had acted as quartermaster at that place, also informed me you had let him have money for the public use. Did I not always discover to you a desire to advance the interest of the country, and promote the general cause of America? You did and bore with us the character of a warm friend to America.

The COURT. Did Mr. Smith inform you that he had used the boat? No. I did not see Mr. Smith afterwards until he was coming from Fishkill after he was taken up.

The Prisoner. Did you hear Colonel Robinson was on board the Vulture? It was a common report at King's Ferry that he was on board.

The COURT. Do you know whether Mr. Smith was employed by General Howe and General Arnold to get intelligence? General Arnold informed me, the afternoon of the night the boat was sent into the creek, that Mr. Smith had furnished General Howe with very good intelligence, and that he, Mr. Smith, was going down the river to procure intelligence for him, and desired me not to delay the boat a minute, but, as soon as it arrived, to send it into the creek.

Colonel John Lamb. Was at the table at dinner (there was a number of other gentlemen pres-

ent) with General Arnold at the time letters were brought in, and he said they came by a flag from Colonel Beverly Robinson; there was one he said for him, and another he said for General Putnam; he opened the one he said was for him, just looked at it, and put it up in his pocket. Never heard of his receiving any more. He did not read the letter to me; he told me that Beverly Robinson had proposed an interview with him, and asked my advice on the subject. I advised him, as he was then going down to meet his Excellency, to show the letters from Beverly Robinson to him; and told him, as the proposal was of a very extraordinary nature, I could not conceive what views Beverly Robinson could have, in proposing such an interview. If anything he had to communicate was of importance to this country, he might do it by letter, but that it was a matter that respected his own private concerns, his business would be with the governor of the state, not with the general commanding in the department, but that I supposed the latter was the case—that it was a matter of private concern respecting his estate; told him the proposal was of such a nature, that it would induce a suspicion of an improper correspondence between him and Beverly Robinson, if there was an interview between them. Told him, that as he was going down to meet his Excellency at King's Ferry, I would advise him to show the letters to his Excellency, and take his advice how he should act. After he had an interview with his Excellency, I put the question to him, to know if he had shown these letters to the

general. He told me that he had, and that his Excellency's opinion respecting the matter exactly coincided with my own. I afterwards asked his Excellency if he had shown him these letters, and he said that he had.

The Court. Did General Arnold mention to you the purpose of the interview? He did not.

The Prisoner. Did he not afterwards show you another letter from Robinson, in which Robinson promised to communicate to him intelligence of the utmost importance to America, if he might be restored to the repossession of his estate? He did not, nor ever mentioned any such circumstance of such a proposal to me. Was that all the conversation, that you have mentioned, that passed between you respect-

ing the letters Arnold had received? It was. Did you know whether flags frequently passed between Arnold and the ship Vulture? I never heard of a flag passing between him and the ship Vulture, until Arnold was gone off to the enemy. Were you stationed at the garrison at West Point, at the time Arnold told you of the interview proposed by Robinson? I was.

Major General Howe and several other American officers were examined by the prisoner, and testified that he had been in the habit of furnishing intelligence to the Americans of the enemy; and that he always appeared to be a strong friend of liberty, although he was at one time regarded with suspicion on account of his family.

THE ARGUMENT AND VERDICT.

The Prisoner requested time to prepare his defense, and several days were allowed him for that purpose.¹² When the court assembled again, he read a long defense, which occupied a quire of paper. He again denied the jurisdiction of the court, contending that the resolve of Congress, on which the charge against him was founded, could not abolish a fundamental principle established in any of the civil constitutions of the states in the union; that the exercise of the power, vested by this resolve, deprived the subject of the right of trial by jury, the great bulwark of individual freedom. He then urged that General Arnold was actually a major general in the American service, at the very time he was engaged in the combination specified in the charge, and that he could

¹² "Without any one as my counsel," says Smith, in his narrative, "I was compelled to enter on my defense, which I did with the more cheerfulness, from the candid and impartial manner in which the trial was conducted by the judge advocate, and the court-martial in general, but more particularly the president, Colonel Henry Jackson, of the town of Boston, in the Massachusetts state."

not have had any agency, without the sanction and direction of Arnold; and the evidence clearly showed that the whole proceedings of the prisoner were in obedience to the instructions of General Arnold. He also insisted, that the charge against him was in effect a charge of treason against the United States, requiring the strongest proof, and the testimony of two witnesses to each overt act. He then entered into a careful examination of the testimony in the case, and concluded with a solemn asseveration, that what he had declared to General Washington was strictly true; that he had no knowledge whatever of Arnold's real plans, but had acted throughout in good faith.

The COURT adjourned, and after holding one session for consideration, pronounced the following sentence:

The evidence produced on the trial and the prisoner's defense being fully and maturely considered by the court, they are of opinion, that notwithstanding it appears to them, that the said Joshua H. Smith did aid and assist Benedict Arnold, late major general in our service, who had entered into a combination with the enemy for the purposes which the charge mentions, yet they are of opinion, that the evidence is not sufficient to convict the said Joshua H. Smith of his being privy to, or having a knowledge of the said Benedict Arnolds' criminal, traitorous and base designs. They are, therefore, of opinion, that the said Joshua H. Smith is not guilty of the charge exhibited against him, and do acquit him of it.

THE TRIAL OF REVEREND GEORGE W. CARAWAN FOR THE MURDER OF CLEMENT H. LASSITER, WASHINGTON, NORTH CAROLINA, 1853.

THE NARRATIVE.

A Baptist preacher in North Carolina who had quarreled with a neighbor, a school teacher, followed him into the woods one day, shot him, and then buried his body in a secluded spot. The corpse was accidentally discovered, and fearing that he would be accused, the parson fled the state. But he returned in a few months, was arrested and charged with the crime. When the jury came into court with a verdict of guilty he drew a pistol; shot the prosecuting attorney and then killed himself.

THE TRIAL.¹

In the Superior Court of Beaufort County (Washington), North Carolina, November, 1853.

HON. JOHN L. BAILEY,² Judge.

November 23.

The *prisoner* having been previously indicted by the Grand Jury for the murder of Clement H. Lassiter was arraigned today and pleaded *not guilty*.

¹ *Bibliography.* * "Trial of the Rev. Geo. W. Carawan, Baptist preacher, for the murder of Clement H. Lassiter, Schoolmaster. Before the Superior Court of Law of Beaufort County, North Carolina. Fall Term, 1853. With Seven Engravings. New York. Printed for the Proprietor, 1854."

The pamphlet opens with a sketch of the "life and character" of Carawan, who was born in Hyde County, North Carolina, in 1800. He was an unusually bright boy and early became a clever speaker and debater. Before he became of age his mother removed with the family to Malamusket Lake, where he assisted her on a small farm and where he married Elizabeth Carrow. In 1822 he removed to Goose Creek, Beaufort County, where he engaged in

George S. Stevenson, State Solicitor, *E. J. Warren*,³ and *D. M. Carter*⁴ for the State.

James W. Bryan, *William D. Rodman*,⁵ *F. B. Satterthwaite*,⁶ and *R. S. Donnell*⁷ for the prisoner.

farming. In 1827 he joined the Baptist Church and soon after was ordained a minister, he having assured the elders that the Savior had appeared to him at his bedside surrounded by a halo of glory, and extending to him a scroll, told him to go and preach the gospel. He had charge of several churches for twenty years and was most successful in his ministry. In 1839 his wife died and in three weeks he married Mary Bell. He carried on farming along with his preaching and was successful in accumulating a good deal of property. He was hospitable and popular. But he was a degenerate, nevertheless. He was generally suspected of having murdered his first wife; he seduced a young woman, Polly Richards, for which he was dismissed from the church, but afterwards on promising amendment, reinstated. The child of this woman he took into his home, but when it was three years old he strangled it, and buried the body before the neighbors could examine it. And of several other crimes he was suspected. Then came the crime of which he was convicted.

² BAILEY, JOHN LANCASTER. (1795-1877.) Born North Carolina; educated University of North Carolina. Studied law with Gov. Iredell, and was admitted to the bar before 1821. Represented Pasquotank County in the House of Commons (N. C.), 1824, and was elected to the Senate in 1827, 1828, and 1832. Delegate to the State convention, 1835. Judge of the Superior Court, 1837-1863. Taught law in Elizabeth City, Hillsboro, and on his farm in Buncombe County, and conducted a law school at Asheville from 1865 until his death. See Biog. Hist. of N. C.; Wheeler, Hist. sketches of N. C., 1851; Wheeler, Reminis. of N. C., 1884; Arthur, Hist. of West. N. C., 1914.

³ WARREN, EDWARD JENNER. (1824-1876.) Born Vermont; went to North Carolina as a teacher, locating in Washington, where he studied law. State senator, 1862, 1864, 1871, and during his last term speaker. Appointed one of the judges of the Superior Court by Gov. Worth. In politics a strong Whig. See, J. G. McCormick, Personnel of Conv. of 1861. (James Sprunt Hist. Mon. No. 1); Wheeler, Reminiscences of N. C.

⁴ CARTER, DAVID MILLER. Born Hyde County, N. C. Graduated University of North Carolina. Practiced law in partnership with E. J. Warren in town of Washington. A Whig in politics and opposed secession, but at the outbreak of the Civil War raised a company for the 4th N. C. regiment. Wounded at Seven Pines, and disabled for field duty, was made one of three judges of the military court of Longstreet's corps, with rank of colonel, continuing in this position until chosen to represent Beaufort County in the House of Commons in 1864. After the war he returned to

The following jurors were selected: Joshua Rowe, William J. Adams, Jesse Spear, David R. Brooks, Christopher Bright, George S. Brown, Benjamin Patrick, Nathan Godley, John G. Jones, George R. Discon, William R. Tripp, Benjamin Robinson.

MR. STEVENSON'S OPENING.

Mr. Stevenson. Gentlemen of the Jury: In a case of this importance, it is necessary that you should understand distinctly the issues which you are called upon to try, and it becomes my duty, gentlemen, to present those issues. This is a solemn duty. The Court, the bar, and all present, are impressed with its solemnity. You have been selected, gentle-

law practice and farming at Washington; later removing to Raleigh. Died in 1877. See, Wheeler, *Reminiscences of N. C.*

⁵ RODMAN WILLIAM BLOUNT. (1817-1893.) Born Washington, N. C., of distinguished ancestry. Graduated University of North Carolina, 1836. Studied law under Judge William Gaston of New Bern and began practice in Washington. In 1854, with B. F. Moore and Asa Biggs, was appointed by the legislature to revise the North Carolina code. The alterations necessary to adapt the New York code of civil procedure to the judicial code of North Carolina were mainly the work of Judge Blount. The acts on criminal procedure, draining lowlands, landlord and tenant, and marriage, stand on the statute books substantially as he drew them, and other laws prepared by him form part of the present code. Breckenridge elector in 1860; elector for the state at large on electoral ticket of Jefferson Davis for President of the Confederate States. Raised a company of heavy artillery when North Carolina seceded; later was brigade-quartermaster to Branch's brigade, with rank of major; in 1863 appointed judge of a military court attached to the army of Northern Virginia. Associate-justice of the Supreme Court of North Carolina, 1868-1878. Represented Beaufort County in convention of 1868. Considered the leading lawyer of his time in the eastern section of North Carolina. See, Biog. Hist. of N. C.; Wheeler, *Reminiscences of N. C.*

⁶ SATTERTHWAITHE, FENNER BRYAN. (1813-1875.) Represented Beaufort County in House of Commons (N. C.), 1836. Presidential elector on the Pierce ticket, member of the Conventions of 1861 and 1865, and of the Council of State during Vance's administration. See, J. G. McCormick. *Personnel of the Conv. of 1861* (James Sprunt Hist. Mon. No. 1).

DONNELL, RICHARD S. Born Newbern, North Carolina. Representative in Congress, 1847-1849. Author of "A Letter on the Rebellion," 1863.

men of the jury, both on the part of the prisoner and the State, for the qualifications which you are presumed to possess for the trial of this important issue. No man is permitted, by our laws, to sit in judgment on the life or death of his fellow man unless he shall be a freeholder. He must have an interest in the soil—he must have at heart the best interests of the State and the welfare of society. The law presumes that they are men of intelligence, indifferent men, who, though they feel themselves under the strongest obligations to society, will yet respect the rights of the accused. You have been selected because you are indifferent, and this inquiry has been made of each of you, where it was thought necessary. If you have not been thus interrogated, the presumption is that you are indifferent. It is supposed that so far as the interests of justice in this case are concerned, your minds are as blank sheets of paper, upon which no impression has as yet been made either for or against the prisoner. But, gentlemen, if this be not so—if you should be under a bias in one direction or the other—if you should not, under the solemn oaths which you have taken, be indifferent, and unimpressed, then you will do a wrong to the State, to the prisoner, and to yourselves.

The prisoner is charged with the highest crime known to the laws—the crime of murder. He stands charged with the murder of Clement H. Lassiter. I shall endeavor to aid you in the inquiry which you are called upon to make, by a presentation of such facts as the State expects to prove. We expect to show that on Monday, the 15th day of November, in the county of Hyde, Clement H. Lassiter, a man in the prime of life and in the enjoyment of good health, was murdered under circumstances of extraordinary barbarity. We expect to show that he was shot with a gun, loaded with leaden bullets, in the back; that he was killed, not by one in manly contest, face to face, but by a hidden foe, who aimed the fatal blow behind, and under circumstances peculiarly diabolical, thus depriving his victim of his life. That this foul deed was perpetrated in a place where no relief could be afforded—where no eye could see, no ear could hear, no help

could come—where the victim had no opportunity to make an outcry, and no time to call upon his fellow men, nor on his God. That the wound was given by a deadly aim, producing instantaneous death. That all this was done in a peaceable community, in the open daytime, and on a public highway.

Had you been just informed, for the first time, gentlemen of the jury, of the perpetration of this deed, your first conclusion would be that such an act was not done in presence of a witness, but rather in the solitude, where no human vision and not the eye of God, if possible, could reach him. Crimes like this are always sought to be committed in secret. So in the case you have now been sworn to try, the nature of the crime, and the time and place and manner of its commission, forbid the possibility of fixing guilt upon the prisoner at the bar by the positive testimony of eyewitnesses to the deed. But, fortunately for us, the all-wise Disposer of events in his wisdom and his mercy has providentially provided that a brother's blood shall cry to the murderer from the ground. He has placed a monitor within our breasts that, like the blood of a murdered Abel, will continually cry out to us and betray our guilt, however hidden are our steps, however secret our machinations. This case is of that sort. Providence has afforded us the means by a train of circumstances singularly remarkable to fix upon the perpetrator of the deed. Some persons are prone to speak of circumstantial testimony as weak and insufficient. Deeper wisdom and reflection have taught a wiser lesson. Some of the wisest and best of reasoners and of thinkers—men skilled and learned in the law of evidence—have told us that a jury may rest upon a well-connected link of circumstantial testimony, with more certainty and safety than upon indifferent testimony of a positive character. A witness may be biased in his judgment, may be misled, may be corrupt, but a well connected train of circumstances, depending on the concurring testimony of many witnesses, cannot lie.

We expect to prove, gentlemen of the jury, that Lassiter was killed, and that he was shot while passing along a public turnpike road, in the county of Hyde. And that you may

better understand the case, we shall introduce an accurate survey of the roads and the surrounding localities. We shall be able to show you that previous to the perpetration of the crime the prisoner at the bar had a motive—that he was thinking about its commission. No man leaps headlong into crime at one bound. He approaches it by degrees; he nurses his revengeful feelings; he thinks about it until he corrupts his own heart and then he acts. We are prepared to show you that previous to the death of Lassiter, the prisoner at the bar had been talking about it, that he had made threats and that the deceased entertained fears that he should fall a victim to these threats. We shall show you that on Sunday, the 14th day of November, the deceased stayed all night at the house of one Dorset Mason, with whom he had been boarding. That he spoke of his intentions to go on the next day, up the turnpike road to Mattamuskeet Lake, to get a school, and expressed his fears of the prisoner, and spoke of getting some one to go with him. Then he left Mason's the next morning with his carpet bag and went to the house of Thomas Bridgman, a neighbor to Carawan, where he dined. After dinner he took his carpet bag and started on up the road, passing Carawan's house about 2 o'clock. Carawan was in the yard and just before Lassiter appeared went into the house, which was a short distance only from the road and from which he had an unobstructed view of any and all who might be passing. Lassiter stopped at Thaddeus Brown's, who was plowing near the road, and talked with him. He went on a little further and stopped at the gate of Thomas Gibbs, some twelve or fifteen minutes, in conversation with him. He passed on from there, along the road towards the lake, and was seen no more alive. We expect to prove that Lassiter was killed upon this road, while going to the lake. That Carawan was in his house a short time only after the deceased had passed; that he then left and went direct across his field and pasture to the woods on the back of his farm, and was shortly followed by his wife to the same point, with a double-barrelled gun concealed under her apron. The wife returned shortly to the house without the gun. Carawan disappeared in the

woods, and is supposed to have hastened through the woods to a place beside the road where the murder was committed. Not a great while after Lassiter had gone on upon the road, Thomas Gibbs heard a gun fired in that direction at quite a distance. Carawan returned to his house at sundown, without his gun. The place was an appropriate one for the perpetration of such a crime, and one likely to be selected. In a few days the non-arrival of Lassiter at his appointment on the lake began to awaken attention. It was ascertained that he had gone that way on Monday. Suspicion began to be excited. His friends became alarmed. It was noised abroad that he had been murdered. Inquiries were set on foot in all directions and on Friday a general search was commenced on both sides of the turnpike road. It will be shown that while the inquiries were going on, the prisoner manifested great interest in the result of them and made efforts to divert these inquiries into a different channel, suggesting to one of his friends the probability that Lassiter had run away, and before this friend had heard that deceased was missing.

In one part of this transaction especially does the finger of providence seem evident. Lassiter's dead body had been carried off a long distance from the road, into a dense and almost impenetrable thicket, and there, beneath the mossy turf of a low bottom, so carefully, so wisely concealed, that it seemed impossible that any human search could ever discover its hiding place. The finger of an all-seeing and a divine providence alone pointed out the spot. Two men on Saturday afternoon, after a long and tedious search which they were about to abandon as hopeless, were led to this place; but how, no one can tell. No mound of newly upturned earth was there, no footprints to mark the spot, and the moss that carpeted the sunken place was smooth and level all alike. A few lumps of dirt, less than a handful in all, and a decaying limb of laurel that had been overturned, told the tale. There, these men found the body. Riddled with shot and bullets, and mangled; there it was, crammed into a hole upon its face, the elbows sticking up, and trampled upon and covered over with turf. The rest of the neighbors on the search were called in to the

place of burial, and the body was identified. It was that of the murdered Lassiter. You will ask yourselves the question, gentlemen of the jury: Did any one of all this crowd, or of all that region act like the guilty man? That inward monitor that not only warns us against the commission of crime, but betrays us when its warning voice is disregarded, caused the prisoner at the bar to proclaim by his conduct that he was the guilty man. Though he took no part in the search, yet he betrayed his interest during its progress, inquiring where and how far it had been made, and where next they proposed to look. And as soon as it was announced to him that the body was discovered he prepares a budget of clothes and flies; declaring as he goes, to his nephew and his servant, "Boys, I must go away or I shall be hung." And more than this, he knew that there was one whose evidence could convict him of the crime. That evidence he seeks to stifle with a bribe. He tells this witness, his own nephew, that if he will tell the people he was home all day on Monday he would give him the best negro that he had. Are circumstances such as these consistent with the prisoner's innocence? If not, although the duty be a painful one, you will be bound to find him guilty of the charge with which he stands accused. But there are other circumstances which point conclusively to his guilt. He returned to his home by stealth, at night, and surrendered himself to the officers of the law, only when he discovered that it was useless longer to hold out. And then, after his arrest, and during his imprisonment, we find him uneasy about the witness whom he had tried to purchase with a bribe, and making further efforts to hire him to leave, and in default of this, to employ others to get rid of him, "by hook or by crook." The State is frank to confess, gentlemen of the jury, that in this case they cannot ask at your hands a verdict of guilty against the prisoner except on circumstantial testimony. If you require better evidence than this, this criminal must go unpunished, and all crime must go unpunished which was perpetrated in secret. We shall show beyond a doubt that these circumstances cannot exist, and the prisoner be innocent of the charge alleged against him. You will

not be troubled with the degree of the crime, for it will not be denied that if the prisoner is guilty at all, he is guilty of murder. One single issue will be presented for your inquiry and your duty, though a painful one, is nevertheless a plain one; if these circumstances point to the prisoner beyond a doubt as the murderer of Clement H. Lassiter, then you will find him guilty; otherwise you will find him not guilty.

THE EVIDENCE FOR THE STATE.

Dr. Bryan H. Griffin. Am a practicing physician of Hyde County. Knew Clement H. Lassiter. On 21st Nov. last saw a portion of his body in a hole in a swamp, cut out just the size of the body below the surface of the earth; it presented an awful appearance, was pressed down into the hole very tight. The body was taken up and carried to the main road, where it was stripped. Recognized the features before it was taken out. Dr. Long and myself examined the wounds. He was shot on the right side, below the shoulder blade; there were 18 or 20 shot holes. A few shot penetrated the right arm; the shot were mixed—small, large and buck shot. One hole in the body appeared to have been made by a ball, or by several shot wrapped up together. Two shots penetrated the heart, and must have caused instant death; several passed through the liver, and the lungs were badly shot. On the opposite side of the body was a wound which had the appearance of having been made by some blunt instrument. From my recollections of the appearance of the wounds, unconnected with any knowledge of the time Lassiter had been missed, should suppose the wounds had not been

made quite so long as the Monday previous, seven days. The body was firm, and the wounds recent; they had been given several days without doubt, but I can not say how long. When the body was taken up, there was a large concourse of people and great anxiety to see it.

Cross-examined. Saw body on Sunday afternoon, 21st November, after 12; deceased had on dark colored cloth clothes, and I think a coat; his pockets were examined, and a key and silver sixpence or shilling found. Only four shots were found and extracted; there were eighteen or twenty shot holes and of different sizes; one you could put your thumb in; others were small; there were three sizes of shots, besides the ball. At the time of the examination, my attention was not directed to the length of time death might have been inferred from the appearance of the wounds and condition of the body; from present recollection, should say some four or five days. The body was not much decomposed.

To *Mr. Stevenson.* Some bodies decomposed more rapidly than others; a healthy body will last longer and loss of blood will tend to the preservation of the body. No physician could ar-

rive at any definite conclusion as to the period of the death from the appearance of wounds.

Jesse Bridgman. Live on Rose Bay in Hyde County; knew Clement H. Lassiter; joined in the search for him the Saturday after he was missed. Had searched with Jesse Mason for some time to no purpose, and finally turned to go out to the road when we came to a low open place, where the earth had been burned out, now grown over with a thick moss and surrounded by a small growth, with a few scattered pines; it was distant from the road about half a mile or less, and the growth between it and the road was small. Here we found the body of Lassiter, buried in a hole below the turf. The first thing attracted my attention was a few small lumps of dirt which looked as if they had been cut with some sharp instrument and thrown out; began to grabble in the earth and soon got hold of the lapel of the coat; then saw the two elbows sticking up; then found the body on the face in the ground.

After we had found it some of the other searchers went back and remained by the grave all night without interfering further with the body. The Coroner was sent for, and when he came the next day he had it taken up; about the middle of the afternoon of Saturday the body was found. It was buried face foremost and pressed down into a hole much the shape and size of the body; covered over with a turf moss with but little dirt under the moss, and just enough of both to hide the body. It had been dry weather, and the place was at that time dry. At wet

times since then, it has been under water. The body had on a thick coat and pants, white shirt and drawers, vest, shoes and stockings. The coat was stripped back from the shoulders and up his back, and the arms were bent back close to the body, with the elbows sticking up. The body appeared to be pressed down as firmly in the hole as it could go.

Cross-examined. Discovered no path leading into the place where the body was buried, and no line of broken bushes. It was near half a mile from the road and back of the field, which is on the road. There was near a quarter of a mile of woods between the grave and the field. In places the growth was very thick.

The body had not swollen and had no bad smell, except the smell of blood. Lassiter was a man of common height, thick-set, tolerably bulky and very fat. The body was carried out to the road by two men on a rail. The head and shoulders were tied to one end and the feet to the other. We trimmed a path out with axes before attempting to go along with it.

To *Mr. Stevenson.* Saw no signs of blood about the grave. The weather during the week had been good. It had been a dry fall. There was a scent of blood about the body. The clothes were stiffened with blood. We worked our way out of the woods so as to find the way back again, and we could not have hit upon the place certainly without it; did not examine to learn whether the bushes and briers were broken or not.

November 24.

Dr. Sanford Long. 21st November, 1852, was called on by

the Coroner to examine the body. It was in the hole, but there was a general gathering round it, and did not particularly examine it at the time. The Coroner had it disinterred and taken out on the turn-pike road, where I examined it. Found it pierced by fifteen or twenty shot of various sizes, on the right side, a little behind, just below the shoulder blade. Some entered the diaphragm, several pierced the lungs, and the liver was considerably comminuted. There was one hole much larger than the rest, seemingly made by a large ball, into which I ran my thumb. Several shot had entered the stomach and heart. The heart had been pierced by two shot, one quite a large one and the other smaller.

Here are the identical shot, and the only four taken from the body. I labelled them and kept them under lock and key. They are badly bruised and look as if small portions of them had been knocked off by striking against the bones of the body. The body was much cut to pieces, and we did not look for others. My opinion is that the large shot, which passed into the right auricle of the heart, proved instantly mortal. Suppose that the wounds had been given from five to eight days. Saw the hole out of which the body was taken. The ground was moist and damp. The place was surrounded by a thick growth.

James F. Latham. Am a surveyor by profession. I surveyed the road and various localities in Hyde County, from Rose Bay to Mattamuskeet Lake. (Here a number of plats were produced.) The body was found a little over a quarter of a mile from the

turn-pike road, in a direct line through the Yankee field and woods. Between the field and grave there is a small piney growth, and very thick underbrush, briers, etc. The body was found in a place where the swamp had formerly been burned. Burnt places like this become barren and grow over with moss. About half way from the turn of the road to the lake, it is very open, and the range of vision extends a half mile in every direction. The grave could be reached sooner from the two pines than from the turn of the road. From the turn to the place where the body was found, the growth is very thick, while from the two pines, the open ground extends a half mile in that direction. From a point half way between the two pines and the turn, the same difficulty would be encountered in going to the grave as from the turn itself, unless the person were to go round the edge of the thick places and then direct to the grave. Thomas Bridgman's house is on the left of the road one-eighth of a mile towards Rose Bay from Carawan's, in full sight. The road is all in sight from one to the other. The distance from Carawan's to Thomas' is about a quarter of a mile in the same direction. Albin Swindell's is less than half a mile from Carawan's, and on the same side of the road, in the same direction. Dorset Mason lives distant from Carawan's about half a mile in a line passing from Carawan's through Thomas Bridgman's. His house stands near the road. Gibbs' house is fifty yards from the road and a quarter of a mile from Carawan's on the same side of the road. Brown's is about

three-eighths of a mile from Carawan's on the opposite side of the road towards the lake. Jarvis lives on the same side beyond Brown's, and over half a mile from Carawan's. No one lives at the open place called Yankee field, and there is no fence about it. No one lives between Jarvis' and the lake.

Levi McGowan. Saw Lassiter's body taken out. He wore dark clothes. The hole that contained the body was dug as near the shape of a man as could be, and as shallow as possible. It looked as if dug with a spade, but roughly. Such a place could have been dug with a hoe. It was deeper where the head and shoulders lay than at the feet and as little dirt taken from it as possible.

Cross-examined. There were branches of thick woods, briers, etc., around the place. The moss covers only the burnt places and does not grow among the bushes. Did not search for any path. Looked for Lassiter's cap and carpet bag about the turn of the road. Saw no sign about there of any scuffle, nor of blood, and saw no broken bushes. I know that Lassiter had a carpet bag, a common sized one, which would not carry many clothes, but I do not know whether he had it the day he was supposed to have been killed; Lassiter had money at this time, don't know if he owned a watch. There was none found on his person; don't know whether any money was found. The woods where his body was found are not frequented for hunting. They hunt on the other side of the road. Don't know that negroes hunt there.

Dorset Mason. Live on Rose

Bay. Clement Lassiter stayed at my house the Sunday night before the Saturday on which his body was found. Went off early on Monday morning to work and left him at the house. When I returned at night, Lassiter was not there.

Cross-examined. Lassiter came to my house on Saturday evening and stayed there all day Sunday. He was not up when I left; opened his room door and saw him in bed asleep. He had been boarding at my house and was staying there at that time. He had a trunk and some clothing there, and also a carpet bag. He wore on Sunday thick pantaloons and a cloth coat; had the same coat on when found. I gave him \$2.80 on Sunday night in silver; if he had more, I did not know it. He had no watch, and I never saw him with one. He boarded at my house near two months. He wore a rough wool or cotton cloth cap; don't know whether he carried his carpet bag with him when he left my house; have never seen it since. His father came and got his trunk; there was no money in it. He spoke on Sunday night of going out to the lake the next day to teach a school. Don't know that he expected to meet any one, and did not hear him say he expected to meet McGowan. He taught a common school and received near \$70 for the quarter.

To Mr. Stevenson. He said he was going down to the lake. He had to pass on the Rose Bay turnpike road to get there; heard him say he was afraid to travel that road; that anybody that would try to get his wife to swear his life away would take his life in any way he could. He

said he would try to get some one to go with him to the lake. He called no name that I recollect. This conversation took place on Sunday night.

Thomas Bridgman. Live in Rose Bay neighborhood, about 239 strides to Carawan's. Saw Lassiter on Monday, 15th November, last; took dinner with us and left about 3 o'clock; saw him no more. He went from my house to the road, but I do not know what direction he took.

Cross-examined. He had a carpet bag in his hand when he left me. I saw his body the Saturday following in a dismal grave, made in a piece of burnt spongy land, about a quarter to half a mile from the main road. Went with the neighbors on the morning of Saturday to aid in making a search for him. Have known the place for eighteen or twenty years. The woods there were once blown down with a whirlwind and burnt over with fire. After that it grew up very thick with pine saplings, gums, sumach and brushes and briars. The company had to cut a road in and out with axes; have seached round the bushes and elsewhere from the place where Lassiter was supposed to have been killed to the place of burial for signs of violence and have found none. Have known Carawan since a boy and have lived near him since he has had a family. It is half a mile from the back part of Carawan's field to the grave and one and a half or two miles to the two pines. To go from Carawan's house through there a person would have to clear his way, and it would take him from a half to two-thirds of a day. To leave Carawan's field and go round

back of the grave through the open ground to the two pines would make the distance a quarter of a mile further. To do this would take a man from one and a half to two hours. Carawan has always been in the habit of shooting about his plantation a great deal and very much accustomed to travelling in the woods with a gun.

Re-examined. Lassiter left my house about 3 o'clock; was restless to get out to my work, and on this account noticed the clock. I have not been in the thicket spoken of for two or three years, except when the body was found. A man could go round back of the thickets through the open ground to the two pines, walking an ordinary business gait, in one and a half or two hours. It would take a man, to go from Carawan's through the thicket to the turn of the road, as long as to go to the two pines.

Thomas Gibbs. Live on Rose Bay, a quarter of a mile from Carawan's, towards the lake, on the same side of the road; saw Lassiter the Monday before his death at my gate at one and a half hour to sunset in the evening. He had a carpet bag on his arm and stopped to talk some twelve or fifteen minutes. He then shook hands with me and went on towards the lake. Next time I saw him was at the grave in the woods. About three-quarters of an hour after he passed my house I heard a gun fire in the direction of the lake. It seemed to be some distance off, and the wind was blowing from me in that direction. Was out about my lot the whole of that evening. Was in a situation to see any one passing the road, but

saw no one pass after Lassiter had passed. A person could go along back of my fence next to the woods as soon as he could go along the road. It was once very thick, but has been cleared out and a road made there. There is a way to get from my field to the Yankee field through fifty or sixty yards of woods. A man walking quick could go through in very little time. I could do it (though old and infirm) in twenty minutes. One could go from Carawan's field round the fence across Yankee field to the turn of the road in an hour or hour and a half.

Cross-examined. Am sixty-five years old. Carawan is, I suppose, fifty-five or sixty. He is much in the habit of shooting about his plantation. He is a lumber and woodsman. Don't remember hearing him shooting blackbirds on Wednesday in the rain. On Monday was sowing wheat.

Ira H. Topping. Live in Hyde County and know the woods in question. Have been there two or three times hunting. Have been from Carawan's through the woods to the road leading to the lake; know the cow range. Was there last fall and this spring. The growth from Carawan's to the road at the school house, just back of the field, is very thick, but back of that it is quite open. Now and then there is a little thick place, and then it is open again. It was very thick around the grave. A person could not go from Carawan's to the pines through the open ground in less than an hour. In some places he could run, while in others he would have to stop to pick his way. It would take an old man a little

longer. Have been through the woods back of Carawan's field out to the cow range. There are cow paths all through it.

Cross-examined. The cow paths in Carawan's woods bear a little away from the direct course, towards Swan quarter. Carawan is about fifty years old, a stout, strong, athletic man, but rather clumsy.

Albin Swindell. Live in Hyde County, on Rose Bay. Was in the woods in question last May. Immediately adjoining the field it is thick in places. Leaving the fields and taking a path into the cow range, you come to open ground. Beginning at the back of Carawan's field, you go by a cow path through the high woods a quarter of a mile to reach the cow range. Going along back of the high woods and back of the place where the body was found, the ground is open. A fire passed through there spring before last, and the young growth is just putting up, some knee high, some waist high. Between the place where the body was found and the cow range is a wet place. There are, all about there, bunches of bushes and open burnt spots, and the body was found in the last spot of burnt ground. You may pass freely from one burnt place to another. It would take a man in a hurry no longer to go from Carawan's field, back through the open ground, to the two pines than to go from Carawan's to the two pines by the road. It is a little shorter, though. Saw Carawan the summer before the murder was committed and had a conversation with him. He told me he and Lassiter had had a falling out; that Lassiter had treated him

very badly; that he (Carawan) had had a house moving, and after the house was moved, Lassiter asked him to walk out with him. He said he would not go but a few steps with him, and Lassiter asked him what was the matter. Carawan told him there was a great deal the matter—that he (Lassiter) had ruined his place by making too free with his wife. Lassiter got into a passion, drew his knife upon him, made at him, and he (Carawan) went to the house. Lassiter followed him. Carawan said he then took down his gun and ordered Lassiter out of his house; told him he should not come into the house, and that if he did not go, he would make a hole through him as big as his arm. After Lassiter got on the road, he had abused him (Carawan) very much. Told Carawan that I had heard of the falling out, and had also heard that Lassiter was afraid that he would kill him; that Lassiter had told me of it. Carawan said he need not be afraid of that, for, if he had wanted to kill him, he could have done so when he had him at his house and in his power. He added he wanted to kill no man, but a man might make him kill him.

Cross - examined. Carawan either said that Lassiter drew his knife on him or made a pass at him with his knife. (The witness was requested to trace with a pencil on the map the line which he traveled from Carawan's field to the two pines, which he did.) The distance from the corner of Carawan's fence, down the cow path to the open ground, is about a quarter. The path does not bear towards Swan quarter. My relations

with the prisoner have been unfriendly.

William J. Banks. Saw the prisoner on 19th and 20th September, 1852, at a meeting house. He had an appointment to preach on those two days. On Saturday he went to the meeting house and sat down. We tried to get him to preach, but he refused. Said he could not. Kept his seat until one or two others had preached. After preaching, he took his hat and went to the vessel at Harvey's Point. Overtook him on the road and invited him to my house to dinner, but he went on. After dinner, went down to the vessel with Hodges Gallop to see what was the matter and why he did not preach at his own appointment. He was sitting flat down in the vessel, in a corner on deck, with his hat over his eyes. There was one negro on board. Asked him what was the matter. He said he had more on him than he could bear and wished he was dead. He said a man named Lassiter, a teacher, had been boarding at his house and he thought he had been too intimate with his wife; that he had driven Lassiter away from his house; that Lassiter had drawn a knife on him, and he had driven him off his lands. He said Lassiter went off and did not say whether he would ever come back or not.

Thomas H. Smith. Saw Carawan, the prisoner, at the August court in Hyde before Lassiter was killed. He called on me to write a State's warrant; said he had been badly treated by Lassiter. Said he had had a house moving, and that Lassiter had stood about all day whittling with his knife and did not assist him. That after dinner Lassiter

asked him to take a walk with him. He went with him a few steps in the back yard. Lassiter asked him to go further and he refused. That Lassiter then asked him what was the matter and what he was mad about. That he replied: "There is enough the matter; you've rendered me a miserable man for life." Lassiter asked him how so; what had he done? Told him he had been too intimate with his wife. He said that Lassiter then flew into a passion and cut at him twice across his bowels. That he (Carawan) retreated towards the house and Lassiter followed after. Carawan went into his bed room and snatched down his gun from over the door. By this time Lassiter was against the bed room door, which was about midway of the house. That he (Carawan) told him to leave his house or he would blow a load through him. Lassiter said he would as soon as he could get his umbrella, got his umbrella and went out. Then Lassiter got into the road, out at the gate, and abused him and said that if Carawan would walk out on the road, he would thrash him like a dog. I then wrote the warrant for Carawan. He said Lassiter had attempted to cut him, and he was afraid he would take his life. He requested a warrant to bind Lassiter to the peace. Carawan said he'd go out and get a magistrate to sign the warrant. He went out and brought in Josiah G. Jarvis, a Justice of the Peace. Jarvis signed the warrant and swore Carawan to its contents. Carawan said: "Yes, Brother 'Siah, that's God's whole truth; that scoundrel and myself can not live in the same neighborhood to-

gether." Told him not to say any more, but to go and have the warrant executed.

Bartholomew Swindell. Saw the prisoner at Rose Bay in November, 1852, a week before Lassiter's body was found. Came down to my boat and said that he wanted me to do him a favor. He said: "I want you, when you go to Washington, to sell my two tame bears. I know you can sell them. Go all over town and get what you can. I'll make a good strong coop and put them in." Then said he to me: "Tholly, I'm sorry I bought the lake lands." Said I: "Why, Mr. Carawan, it is good land." Said he: "So it is, but if I had not bought the lake land, now I could sell the land where I live." Said: "I want to move." "Where do you want to move, Mr. Carawan?" Said he: "To the west country. Everybody here is against me except you, and I expect you are." Then said he: "I want to get out of this Lassiter scrape. The infernal son of a bitch, he deserves shooting, and shooting (shaking his fist) would be too good for him." Here the conversation ended, and he went off and I turned my attention to my business in the boat.

Cross - examined. Prisoner and myself were always friendly and were friendly during the conversation. Have had no falling out. I made no reply to him.

William Tyson. Am a blacksmith and wheelwright. The week before Lassiter's body was found, the prisoner was at my shop. He told me not to treat him like Joe Sawyer did; burn his iron. That Joe Sawyer treated him very meanly. I said to him that there were meaner men than Joe Sawyer. Prisoner

said yes, he had seen a meaner one as he came along this morning. Asked him who, and he said that man Lassiter. I told him I had never seen him. Said he: "Well, I think it's likely you never will."

Mr. Satterthwaite. Do you swear to the words spoken or to the substance? I think I have told it about as he said it in my shop. Did not Carawan say, "You need never want to see him?" He did not. Did you not tell me so in the street yesterday? I sort o' think you're wrong about that. How many drinks have you taken today? Can't tell. Can't you say how many? Well, I can vouch for two. (Here the COURT remarked to witness that this was not a fit occasion for merriment.) I might have taken two or three more, for aught I know. Mr. Tyson, don't you consider yourself drunk now? I think not. How many drinks have you had this afternoon? None since dinner.

The COURT. Mr. Sheriff, is the witness intoxicated?

The *Sheriff*. Don't know him, your Honor. The Sheriff of Hyde is here.

The *Sheriff of Hyde*. The witness is under the influence of liquor, but not so drunk that he can not give correct testimony.

Mr. Stevenson. May it please your Honor, I consulted with the Sheriff of Hyde before calling the witness on the stand.

The COURT. It is evident that the witness is drunk. He must be imprisoned till tomorrow at 10 o'clock for contempt of court in coming into court intoxicated.

November 25.

William Tyson. Am sober now. On Friday before the oc-

currence the prisoner drove up to my shop and said he had brought me some work and that I must not serve him as mean as Joe Sawyer did; that Joe Sawyer had burned up his iron. I said to him there are meaner men than Joe Sawyer. Said he, "Yes, for I have seen a meaner man this morning." I asked him who. He said Lassiter. I said, "I have never seen him." Said he: "No, and I think it is likely you never will."

Mr. Satterthwaite. Did you not last April, in John May's store in Hyde County, tell William Day that Carawan said, "If you ever get acquainted with Lassiter, you will never know any good of him?" Don't recollect. Don't know William Day. Did you not ask William Day on that occasion to go out of the store with you and there tell him of this conversation with Carawan? Did not ask him out. Have no recollection of it. Were you not at John May's store on the third of April last? Have no recollection of being there that day. Did you not say in Washington yesterday in presence of Jonathan Jarvis, that the words used by Carawan to you were these: "If you do not know him, you need never want to know him?" I did not. Did you not say so yesterday, in presence of Reuben Benson? I did not. Were you not sent for to go before the grand jury at last Hyde Superior Court, and were so drunk that you could not go? I don't know anything about it.

George Jarvis. Live at Rose Bay, in the opening, about one-eighth of a mile from Thomas Gibbs'. Know the woods back of Carawan's, Gibbs. the Yankee field, and back of the school

house. A man can go through Carawan's woods and back of the fences to the school house. There are cow paths through the thick places, and part of the way the woods are open. It would take a man half an hour to go through, and I would do it in that time. Cow paths run in all directions through the woods between Gibbs' field and the Yankee field and between the field and school house. A man could go from Carawan's fence through the cow range to the school house in three-quarters of an hour.

Cross-examined. Could go from Carawan's fence, through the thick woods, to the school house with little difficulty in half an hour. The distance is over half a mile.

Thaddeus Brown. Live in Rose Bay, about three-eighths of a mile from Carawan's towards the lake. On Monday, 15th November, was in my field, ploughing and sowing wheat. Saw Lassiter on the road at about three o'clock in the afternoon. He stopped five or ten minutes and then went on towards the lake. After he passed, I saw him at Thomas Gibbs' gap, two hundred yards towards the lake from where I was at work. He stopped with Thomas Gibbs a few minutes. Saw no more of him that week.

Cross-examined. Lassiter was dressed in broadcloth clothes and had his traveling bag on his arm.

Carawan Sawyer. Lived with the prisoner last year. Was bound to the old man. Am now 21. The Monday Lassiter is supposed to have been killed, saw him at about 2 o'clock of that day pass old man Carawan's house. Next saw the old

man going towards the woods and his wife was following behind him with a gun. She went as far as the woods and returned back with nothing to the house. When the old man came back, it was about sundown. That night, after supper, he sent me and a little yellow free boy that was living with him down to Elijah Bell's. When I returned, he was gone. Next morning old man stayed at home and gathered corn all that day. Wednesday morning saw him going towards the woods with a hoe. About 11 he returned. On Saturday he sent me to Graham Moore's. to tell Moore to come and see him. He seemed uneasy and restless all that day and the day before. After I got back from Moore's on Saturday, the old man was white as he could be and said: "Boys, they have found Lassiter, and I have got to go away or else I shall be hung." He shook hands with me and said he wanted me to help his folks gather corn. And if he sent for his wife and children, he wanted me to go with them. I saw him no more until the morning he was taken in his house. When Lassiter passed going towards the lake and Carawan and his wife came out of the house, his wife held the gun up and down by her side, partly wrapped up in her apron. I saw part of it, the breech part, and no other part, and am certain it was a gun. The wife went as far as the woods and then came back quick. Saturday morning, after I had got back from Graham Moore's, he said to me that if I would say he was home all day on Monday, he would give me the best negro fellow he had.

Cross-examined. Had neither

father nor mother when he took me to live with him. Don't know what his wife did with the gun. She may have handed it to him, for aught I know. She came back without it. It was then about 2 o'clock. Had eaten dinner about an hour. Don't know what sort of clothes he had on. Never said that he had on the same clothes when he came back. I never told Ira H. Topping nor Israel Brooks, nor Thomas Bridgman, nor any one else, he got back a half hour by sun. I did not say in Green Bridgman's store at Swan Quarter, in presence of Israel Brooks, that the old man had no gun, and if he got a gun, he must have had it hid off in the woods. The sun was down when he got home, and I did not tell Thomas Bridgman that the prisoner wore back on Monday the same clothes that he wore off. Do not remember to have said yesterday in Asa B. Paul's shop in Washington, in presence of Ruel Jordan, Carney Armstrong and others, that I expected to make more money this week than I had ever made in my life. Do not recollect that some one asked me why I expected to make so much, to which I replied: "That's best known to myself." Since the happening of this affair, I have been living about, and part of the time have done no work. Have lived at Ira Topping's a while, at Dorset Mason's, at Hamilton Watson's and also at Burrage Hudson's. Am friendly with the prisoner. Have nothing against him and never did have. Never abused him out of the way in my life that I know of. Did not abuse him in presence of Thomas Bridgman and say that he ought to be hung, and that he

had treated me cruelly. The first time I was sworn in this case was at George Jarvis', the Sunday Lassiter was taken up, before the Coroner's inquest. Was next sworn before the grand jury at the Court House in Swan Quarter. Don't remember exactly the first time I gave an account on oath about the gun, but think it was before the grand jury. When first sworn by the Coroner, was asked if I saw the old man with a gun and said no. In the grand jury room, I was asked by Levi McGowan if I saw any one with a gun, and I said: "Yes, the old woman." When the old man got back on Monday, saw no blood nor dirt on him and no scratches nor rents on his clothes.

Green Bridgman. During prisoner's confinement in jail, had a conversation with him about Carawan Sawyer. He asked me if I could not get Sawyer to go away, to which I replied no; that I was one of his sureties for his appearance at court. He then asked the amount of the bond, to which I replied I did not know. He then asked me if I could not get him to go away if the bond was paid. I told him that I could not. This conversation took place about two months after Carawan's arrest, and just before a guard was put around the jail.

Cross-examined. Could not say that Carawan said that Sawyer was living with his (Carawan's) enemies. He did not say that he wanted to get him away from his enemies.

Thomas Smith. I am Clerk of Hyde Superior Court. Have a writ made out by the deceased against the prisoner.

Mr. Donnell objected to the

introduction of the writ, on the ground that a transcript was the proper evidence, and not the

original. The objection was overruled by the COURT and the writ permitted to be read to the jury.

It was a writ in favor of Clement H. Lassiter against George W. Carawan in trespass on the case for words spoken to his damage \$2,000.00 issued November 13th, 1852, with Silvester McGowan as surety to the prosecution bond. Said writ was returned executed by William J. Russell, Deputy Sheriff.

William J. Russell. Was Deputy Sheriff for Hyde County. On Monday, 15th November, 1852, I executed this writ on the prisoner at his house. Had process in my hands against the prisoner after the body of Lassiter had been found, but could not find him. I looked for him on Monday and Tuesday, 22nd and 23rd November. Found a long double-barreled gun in Carawan's house, in his bed room. I drew the loads and examined them. Both barrels were loaded, one of them with buck shot. (Here witness took from his purse four buck shot of three sizes, which were put into a tumbler and shown to the jury, and compared with the shot exhibited by *Dr. Long*, which were taken out of Lassiter's body.)

Cross-examined. Stayed at the prisoner's about an hour and left about 1 o'clock. The old man dined and appeared calm and quiet. Found two other guns—one a single-barrel and the other a musket which had no lock. I think the single-barreled gun was loaded. I drew the load and threw it away. The shot produced are what came out of one of the barrels of the double-barreled gun. They are not all that were in that barrel. Might have lost some, though the charge was not a very heavy one.

William Day. Live on the lake in Hyde County. Saw the

prisoner at my house Thursday of the week that Lassiter was missed. Said he to me: "Bill, what do you think? I was sued on Monday." I said, "Ah! and for what cause?" He said Lassiter had sued him for the scandal of his character to the amount of \$2,000. I said: "If they get a judgment against you for that amount, it will begin to strand you." He said he didn't think there was any probability of it, and if he got judgment, it would be but small. He then asked me if I had seen Lassiter during that week. Told him I had not, and he said he had not, either, but his folks told him they saw him pass towards the lake Monday evening with his clothes bag on his arm, which looked to be full of clothes. Said he: "I was thinking perhaps he had cut out." I said he was probably down the lake, at Mr. Topping's or Mr. McGowan's, as he was in the habit of visiting there. He replied that he was thinking he had cut out.

Cross-examined. Made a careful examination in May last of the woods back of the fields and elsewhere, in company with Albin Swindell, Ira Topping, Dorset Mason and Burrage Hudson. We took our time for it. Think it will take a man an hour to go from Carawan's fence, the best way through to the pines, if he has good use of himself. If he

had to carry a gun, it would take him longer. Would not take a man as long to walk from Carawan's to the two pines along the road as it would to go through the woods and range. I should think that Lassiter, by the road, might have got to the lake before Carawan, through the woods, could have got to the two pines. In the conversation I told Carawan that I did not know the man. Carawan then told me if I ever got acquainted with him, I never would know any good of him.

Haughton Simmons. Saw prisoner on the Friday night after Lassiter was missing and again on Saturday. When Carawan asked me if I had been searching for that man that was missing, told him we had. Asked me which way we had searched. Told him we had searched down each side of the pond road between the school house and the lake, and that I had traveled through from the school house to the Yankee field. Told him we had not yet searched back of the Yankee field, but calculated to do so in the morning. On Friday night, about dark, went to Carawan's house to go to the lake with him, as soon as we got out, told him the news we had just heard about Lassiter being missed. He said it was strange to him; that he had never heard anything of the news, and he had not seen him since the Saturday before at Jim May's store. He talked about the fracas between him and Lassiter, both going and coming, and spoke of Lassiter having bound him over to the peace and of his binding Lassiter. When I told him we had searched the pond road, he asked me what part of the pond road.

Cross - examined. Carawan asked me what they thought had become of the man. I told him the calculation of the people was, from the proceedings, that he had been destroyed. The old man asked me what they thought had destroyed him. I told him that, from every circumstance, I thought he would be the man impeached.

Silvester McGowan. Saw the prisoner on Thursday of the week Lassiter was missed. Saw a few scratches on one side of his face and asked him if he had been fighting, remarking in a jocular way that I did not do it. His left hand was done up in an old black rag. Was waked up one Saturday night in January, and with a posse went to Carawan's house and built up fires round the house. We stationed a guard at every fire out of doors and one at a fire in the house. We had access to all the rooms, and all the doors were easily opened but one. That room door was locked, and the guard had fastened a rope to the knob on the outside and tied it to a stake. Heard a noise, then confusion in the house, and placed a guard at the window. Went to the door that was fastened. John Alcock was holding the knob at the door with some one's fingers in the crack between the door and the facing, which, I believe, were the fingers of Carawan's wife. Presented my gun, and others presented theirs and cautioned them not to shoot each other. Alcock cut the rope and opened the door and the prisoner came out to the hall room, where we were. He was arrested and I tied him. He counted his money and I untied him so that he might put on his clothes. We indulged him

until he got his breakfast and his wife could get a bed for him, and then we carried him to the jail at Swan Quarter.

Cross-examined. When I saw the scratches on Carawan's face, I had not heard that Lassiter was missing. No resistance was made by Carawan, and he had no weapon but an old pocket knife. He was undressed when we tied him. Am not friendly with prisoner, and have not been for a long time.

Henry O. Tooley. Saw the prisoner, George W. Carawan, at my gate on Fortescue's Creek at 11 o'clock on Saturday night, 20th November. My house is about twelve miles distant from Carawan's. Went with him down the creek in a canoe about three miles and left him at Lupton's, where we arrived about 12 o'clock at night. He told Lupton he wanted him to carry him to Durham's Creek Mills in Beaufort County. He appeared to be different from what he had always appeared to me before. He didn't seem to have much to talk about. Lupton asked him when he wanted to be carried. He replied, "Now; right now." Lupton asked him if he could not defer it until the morning. Carawan said: "No, I want you to carry me now." I started off then and left Lupton getting ready to carry him. He followed me out of the house, told me good-bye and said, "I want you to keep this a secret for the present."

Dempsey Lupton. On the night spoken of by last witness, the prisoner came to my house at midnight. He asked me if I'd carry him to Durham's Creek Mills. Asked him when he wanted to go. Said he, "Right

off; now." Requested him to stay until morning, but he seemed very unwilling to wait a moment. Carried him across to Durham's Creek Mills. He told me he was going to William Carawan's to buy a piece of land. While we were crossing the river, prisoner appeared like a man who was tired or sleepy. He had very little to say and lay down most of the time in the canoe.

James F. Latham (recalled). Had a warrant against Carawan twelve months ago, issued by Judge Battle, and went in pursuit of the prisoner, but did not overtake him.

Bartholomew Swindell. Passed Carawan's house on horseback twenty-five minutes after one on the Monday that Lassiter is supposed to have been killed. He had on a suit of double-wove blue mixed home-spun — both coat and pants—and a new hat. Passed his house the next day on my return; saw him again. He then had on brown clothes—a sort of monkey coat, which came down near his knees, which looked very much worn. Saw white on the shoulder next to me, which looked as if the coat was torn and left the shirt exposed. His pantaloons were of the same sort of brown home-spun that the coat was made of. He had on a different hat. It looked as if it had been a raccoon hat or a furred hat, very much worn.

Dorset Mason (recalled). Was present when Carawan was arrested. Went to his house about 7 o'clock at night. Went to the bed room door and called Carawan, but no one answered. Then called Mrs. Carawan several times, but no one answered. A little girl went to the door to un-

lock it to let us in. Seven of us went into the house and searched and found one room locked. Could not find any key to fit that door. Fastened that door on the outside and concluded to stay all night. Between two and three o'clock, heard the guard call for help in the house. Heard a noise and Carawan came out of the bed room in his night clothes. We stayed with him until after day the next morning and then carried him to prison. There were about twenty-five persons there. Some had muskets and shotguns and other weapons.

F. S. Roper. Have been Sheriff of Hyde County about three years. Had precepts against Carawan and could not find him in Hyde County.

Solomon Northon. I found these letters on the floor of the dungeon occupied by the prisoner in Hyde County. One of them was folded up very small and inclosed in the larger one.

Cross-examined. The dungeon in Hyde is 16 by 20 feet; has no fireplace and no means of

warming it. It has two air holes in the outer wall. They are about two feet higher than the head of a man and can not be looked through from the inside. Carawan was confined there on the 8th February last. Some days after that it was very cold. The prisoner had candles. He was confined there until the last of the month. After that he was put into the next room during the day time, where there were two windows and fireplace, and shut up in the dungeon only at night. Persons were permitted to go to a line eight or ten feet from the jail and talk to him, but no nearer. His counsel went to see him.

A. B. Swindell. Know Carawan's handwriting. Have seen him write. I believe these papers to be in his handwriting.

Cross-Examined. Am well acquainted with Carawan's hand and have frequently seen him write. I should believe all and every part of this writing to be his.

The papers were read to the jury by *Mr. Warren* as follows:

My Dear Old Friend: Whether you can get a rogue to leave or not, deliver me. You understand me. You said you had boys that would do thus and thus. Are you going to let them falsely swear me out of my life? You can fix it. I do know you can. You see Reuben, he will see you are paid, and so will Bro. Jarvis, for I have directed both of them about the matter, as I said before. Look upon my old gray head and then look on my poor little babies, and my affectionate wife. Bro. Jarvis said yesterday from what he knows, or words to this effect, that some on Rose Bay, and elsewhere—and gave me to understand it was A. B. Swindell—that if it was not for the law, they would go upon Mary, and take her life, because she paid respect for me. Good Lord! take all these things in consideration, and then deliver me for heaven's sake. If he will not leave, have done otherwise; for God's sake, let it be done before court in February. Consult Reuben on the subject. And don't delay, for delays breed dangers. You don't live in the neighborhood, there-

fore you will not be thought of. Oh! deliver me, and nevermore will I forget you, in this life, and I hope the Lord will not in the world to come. Yours."

"Tell Reuben not to let a few dollars be lacking, and let my neck unjustly be broken. Tell him and Jordan, and both the Johns, Benson and Stokesberry, to try and get that foolish boy to leave. And do you, my friend, go with him and see that he is gone. I then should not be so crazy. And Reuben, child, don't let money and industry be lacking in this matter, for heaven's sake. The only uncle you have in this life, and will you suffer me to be hung, before you will pay a few hundred dollars? If you try amongst the people there can be over \$1,000 made up. \$500 would hire him to leave, no doubt of it. Be careful, for he is at Burrage's. N. B. I have directed Mary to pay \$500. Make up \$1,000 if needed for God's sake, when he and Albin are continually drilling him. For they are determined to hang me, if possible. My old friend, consult with Reuben and Satterthwaite, and one another, and don't talk only but do. For heaven's sake, my old friend, you fix with Hoyt, if you can put trust in him. I believe he will do right. Get him to pass me, and also to you. Go ahead, and through this channel let me know. I never will betray you or him while I live; and should I be spared through you and him, I pray God Almighty to bless you both, in time and eternity. Tell Hoyt to make chances to be at the window and have him a long stick with a crooked end, and a split in the end of it. He can pass all in to me."

"My Dear Old Friend: Do let me know through the channels I have prescribed. Also, let my poor wife know what is the prospect and she can give me to understand. Tell her to be careful, for they are going to have her sworn: and that is one reason why they have cut her off from me—is for the purpose of setting her against me, if they can, and take advantage of her weak mind. Caution her to be on her watch, and not to talk to any on the subject, and not to suffer them to question her, and if they try, let her answer be this: 'to let that be done on the trial,' and stop right there. Don't forget to tell her, if you please. Try to write her a letter in by the lawyers at court if you cannot get them in by Hoyt, but you can. Get him also to take mine, and I will pay him for you. Tell my wife to give him something, but be sure to do the main thing—to put aside that evidence by hook or by crook. Were you here and suffering as I now do, I would go to death almost to rescue you. You cannot begin to think how bad it is; I can't tell myself. I have said enough for you to understand me. I subscribe myself a poor sufferer.
Old Horse in the Stable."

Solomon Northon (recalled).

Mr. Rodman. Did the prisoner Carawan know that his counsel had been denied access to him? Objected to by the *State*.

Mr. Rodman. The language of the letters is ambiguous, and to ascertain the proper construction, it is competent to ascertain the

situation of the prisoner at the time. A very different construction might be given to a paper if the writer was under torture, instead of in a situation of comfort.

The Solicitor. I can't see the relevancy of the question, and am anxious to avoid irrelevant matter.

Mr. Bryan. The situation of a prisoner before trial and after is very different. Before trial the prisoner cannot be denied his counsel or his family. If under this uncommon duress he does an act, it is competent for him to show the circumstances under which he did it, to explain the act done. If we could show the facts, certainly the weight of this testimony would be greatly affected.

The Court. The question is asked whether the counsel for the prisoner was permitted to visit him. The Court considers it irrelevant, and therefore deems the question incompetent.

Mr. Rodman. We propose to prove a case of barbarity to the prisoner.

The Solicitor withdrew his objections.

Solomon Northon. Carawan was confined in the dungeon, from the 8th to the last day of February. He had bed and bed-clothing. Had candles, night and day, a pound at a time. It was too dark to read or write there without candles. It was plenty warm in the dungeon when I went in there, but I don't know how it was to one confined there. The walls were two feet or eighteen inches thick. The air was not fresh, and the apartment smelt disagreeable to me. Mr. ——— vomited on going in there and he was the only one that I knew of.

The prisoner appeared quite feeble. His counsel were not at first allowed to visit him. They were refused on Sunday, but allowed on Monday after the Colonel arrived, and always after that. I cannot say whether Carawan knew that his counsel were refused access to him. Mr. Satterthwaite did tell him from the outside that he could not go in that evening.

Mr. Rodman. Were not people allowed to go there and abuse the prisoner? Not by me. Peo-

ple would stand about the jail and would sometimes curse while they were there.

Mr. Stevenson. I think, your Honor, that the testimony is taking a wide range.

The Court. I deem all this testimony admissible.

Thomas H. Smith. Have heard William Tyson examined. Was in Mr. Campbell's store at Germanton some time in November and heard Tyson telling his story to a company. He was speaking of the difficulty between Lassiter and Carawan, and about the State's warrant. He spoke of Carawan's coming to his shop the day before to get some iron work done. Said he and Mr. Carawan were talking about Mr. Lassiter, and that he told Carawan he did not know Lassiter. That Carawan then said, that if he did not know him, he never would know him. He was not talking to me, but to the company. He said the conversation had taken place at his shop the day before. On that same day I heard the witness make use of the same language at the store of Wm. H. Smith, and in pres-

ence of Smith and others. I noticed no difference in the language used.

Cross-examined. Prisoner and

I have been on the most friendly terms all our lives. I have denounced him since this transaction.

November 26.

THE DEFENSE.

Mr. Rodman. Gentlemen of the Jury: The counsel for the prisoner have concluded that it is proper for them, under the present aspect of this case, to introduce testimony. The Solicitor thought proper, in his opening remarks, to comment on the weight which ought to be given to circumstantial testimony. I do not propose to follow him in those remarks, as comments of this sort will more properly be made at a different stage of the case. Whatever may be the weight due to circumstantial testimony, the circumstances ought to be such as to satisfy your minds, beyond a reasonable doubt, of the entire guilt of the prisoner. It must be as strong and conclusive as the testimony of one respectable witness would be, who swore positively to the fact. If there be a case of any sort, depending mainly upon the testimony of one witness, and from which, if that testimony be removed, there remains nothing but chaos and darkness, a jury should require that that testimony should be above suspicion, untarnished, and absolutely reliable. In the ordinary affairs of life, you refuse to act upon suspicions, and especially upon the testimony of one tainted with falsehood. A humane mind would refuse to condemn a dog upon testimony that is not reliable. In a case like this, where the life of a fellow-being, where the life of a free man is at stake, you will require the testimony of this one witness to be above suspicion, and entirely worthy of credit. To do otherwise, would be to shock common sense and common humanity. This is such a case. The Solicitor properly characterized Carawan Sawyer as the principal witness. Whatever may be the other circumstances, it is perfectly obvious, that if his testimony be stricken out, nothing remains. We have a number of witnesses in attendance, but under the particular circumstances of the case, we do not consider it necessary to in-

introduce any, except to impeach the witnesses for the State, and especially the witness Carawan Sawyer. It is candid to state that we do not expect to show that Carawan Sawyer had hitherto acquired in his neighborhood a character bad for truth. You know from what you have heard, that he has not arrived at full age—at that age when the law allows him to act as his own master, and make his own bargains. He had no opportunity to mix in society, and give evidence of his credibility. Before you can impeach a witness you must prove that he had a general character, a character which was generally known. Situated as this witness was, a young man, reared upon a farm, spending his time amid the ordinary drudgery of agricultural labor, he could not have acquired a general character. And if, under such circumstances, we were to introduce witnesses of high respectability to prove that he had acquired a general character you would be justified in regarding their testimony with incredulity. You would conclude that they had spoken what they imagined and wished to be the case, rather than what they knew. It is evident that, living the retired life he has, in the solitude of a farm, he could not have acquired a general reputation. But if you could be satisfied, from the nature and character of his testimony, that this witness is unworthy of credit, then the course which we shall adopt to impeach him will be of a character stronger and more satisfactory, than if we should seek merely to go into his general character. In the affairs of life, if you find a man varying in his account of the same transactions, either from defect of memory, or want of honesty, telling different stories at different times, you decline to act upon his testimony, in any matter of ordinary importance. We propose to show that this witness, in detailing this matter, has over and over again varied his statement in important particulars.

If these variations consisted in mere matters of minor importance, charity would induce us to attribute them to that ordinary defect of memory common to mankind. But when in his first account shortly after it occurred, while the facts were fresh in his memory, at a period when according to his own

statement no bribe had been offered to lure him from the path of truth, when there was no motive to speak an untruth, and before he was stimulated by the malice of others, we find him exculpating the prisoner; when we find that in his second statement, when he was sworn and cautioned as to his responsibility in what he was about to say, he purposely suppressed and kept back one most material fact to which he now deposes, which was first brought out some weeks after this occurrence, and at the suggestion of another, I ask you what credit can you give to his testimony? Which of his various statements will you believe? When he commences with a statement which exculpates the prisoner entirely, when day after day he adds stone upon stone to the edifice, urged on by the malice of himself and others, what other conclusion can you come to, than that the witness is acting on a settled purpose to take away the life of the prisoner at the bar by perjury? And we propose to show that he entertained and now entertains a vindictive malice towards the prisoner, inciting him to the task of this great crime. We expect to show that another material witness, William Tyson, had at different times given different accounts of the conversation he deposed to. I will not be so uncharitable as to suppose that he acts corruptly, will be willing to suppose that his intentions are correct, and to cover up his faults with the mantle of charity. But if the witness is so besotted by intemperance as to impair his memory—if his diversity of statements is the result either of the want of integrity or memory, you will be compelled to disregard his testimony.

And it will be well enough now to apprise you of a well-settled principle of law, which ought to guide you in all your estimates of the weight of evidence. In considering the testimony of a witness, you must take it all; and if in any part he is wilfully and corruptly false, you are not at liberty to cull out what is true from that which is false, receiving the one part and rejecting the other. You are bound to reject all as tainted and unworthy of belief.

We propose now, gentlemen of the jury, to examine the witnesses, that you may see and judge of these various statements.

THE WITNESSES FOR THE DEFENSE.

R. M. G. Moore. Was at Smith's store on the Saturday Lassiter's body was found. Saw Sawyer, who presented me a line from the prisoner. Read its contents, the prisoner requested me to go to his house. He also said in the note that he (the prisoner) was at home all day on the Monday that Lassiter was killed. Asked Sawyer if he knew it to be true that his uncle Washington was at home all day on Monday gathering corn in his field. He replied he was at home, and he knew it to be so. Sawyer said to me, "What I told you at town was not true," or "was not so." I asked him why? What part was no true? He said, "Uncle Washington did leave me awhile." I said, "Where were you, I thought you told me they were gathering corn?" He said, "No, we were gathering corn until dinner, and after dinner we were at the crib throwing in corn when Lassiter went by." He told me he saw Lassiter. I asked him if the old man saw Lassiter. He said, "He didn't know that he did, but soon after Lassiter passed, the old man went into the field," or "went that way." The next week I had another conversation with Sawyer. Remonstrated with him for telling me a different story from what he had sworn to before the Coroner's inquest, and told him what I had heard. Spoke to him in a rough manner, reprimanding him for not telling me the truth at first. He said, "The old man did go, he did leave me, and he was gone some time." I asked him

how long he was gone. He said he did not get back till nearly night, that the sun was not more than half an hour or so high. Asked him if Carawan had any gun. He said, "if he had any gun I did not see it." I asked him if he knew where his gun was. He said he did not.

Cross-examined. In the note Carawan said that he was at home on Monday, Tuesday and Wednesday, and that Carawan Sawyer would prove this. Asked Sawyer if this was so. He said it was, for he was with him all day gathering corn.

Thomas Bridgman (recalled). Am acquainted with Carawan Sawyer, and have had three conversations with him about this affair. The first conversation was at the prisoner's house, a short time after Lassiter's body was found, and after the prisoner had left. Mrs. Carawan and Sawyer were talking about gathering the crop and Sawyer was talking about leaving. Persuaded him to stay and help house the crop, if he would not stay any longer. Told him they needed help, and that some of the corn too, was his own. He said he would not stay, for if the old man should come back and find him there, he would kill him. He did stay and helped to house the crop. Two or three weeks after he came one night to my house. I told him I had heard a great deal he had been saying about this matter, and wanted him to tell me the truth of it. This was after his examination before the Coroner and before his examina-

tion before the Grand Jury. "Well," said he, "about the time Lassiter got against the gum (the gum is about 200 yards from Carawan's house), I saw the old man going in the direction of where the hands were at work, towards the field, and Aunt Mary was going after him across the yard, a little way behind him. Little John was with me at the barn door and said "Mamma's got the gun." "I should not have seen the gun if John had not said that." Asked him what part of the gun he saw, he said part of the breech. He said the old man went down the field path across the pasture in the direction of where they had been at work, and Mary went across the pasture, bearing to the left, to a gun which stands at the point of the woods. Asked him how long it was before Mary came back. He said she did not stay long. Asked him what time the old man got back. He said about half an hour to sundown. I asked him if he wore the same clothes back that he wore off. He said he did. Asked him if his clothes were torn with brambles or bloody. He said he never noticed.

Israel Brooks. Happened in at Green Bridgman's store, two or three weeks after the prisoner had left, and a conversation was going on about Carawan. Witness Sawyer was relating the transactions. He was asked if he saw Lassiter when he passed Carawan's house. He replied, "Yes, I did see him." He was asked where he (Sawyer) was when he saw him pass. He replied, "I was at the barn, heaving in corn." He was asked where his Uncle Wash was, he

answered: "I don't know, but expect he was in the house. I rather expect he was in the piazza next to the road, for he came out of the house from that side next to the road, and came to the barn where I was throwing in corn. He passed by me and went out into the field where the hands were carting in corn." He was asked if Carawan had any gun. He said, "No, I did not see him have any gun that day." He was asked how he supposed Carawan got the gun. He said "If the old man had any gun to kill Lassiter with, he must have carried it there overnight, or the next morning before day, before the rest of the family were up."

Cross-examined. There were some three or four persons there, but was in a hurry and do not recollect their names.

Ira Topping. On Sunday had a few words with Carawan Sawyer at Carawan's gate, before the inquest was held. Asked him where Mr. Carawan was, and was he at home? He replied, "No, I have not seen him since yesterday (Saturday) evening." Asked if he saw Carawan carry any gun he said he did not—that after Lassiter passed, the old man went walking very quick through the pasture towards the woods.

The next conversation was some three or four weeks after this at my own house. He said, "we were gathering corn on Monday till dinner. After dinner I went to throwing in corn. About two loads had been brought and I was at the barn door throwing it in, and one of the old man's little sons was there picking up the short corn. The little boy said to Mr. Carawan, Yonder

goes Lassiter. I raised up and looked, and just got a glimpse of him as he went by the corner of the barn, going towards the lake. The little boy says, 'Yonder goes papa,' and presently afterwards 'Yonder goes mamma with the gun.' When the old man passed I raised up and looked and saw him. When the boy said, 'Yonder goes mamma,' I raised up and saw her with the gun on her left side towards me. I saw the breech of her. She had it wrapped up in what I thought was her apron. She was carrying it in her arm up and down, and I am sure it was a gun she had. She was a few steps behind the old man. He went right through a pair of bars and through the pasture. After he got through the pasture and to where the corn was, he turned and went to that piece of woods. Then she cut across the pasture towards that piece of woods." I asked Sawyer if he saw her give Carawan the gun. He said, "I did not, and I did not see the old man with any gun. Soon his wife returned without any gun, and went into the kitchen and went to weaving." He said the old man got back about half an hour by sun. I asked Sawyer how the old man acted when he heard that Lassiter was found. He told me that on Saturday evening, he (Sawyer) and the negro man had gone into the woods to cut some wood. He looked up and saw some one coming towards them down the path. When he came up it was the old man Carawan, with some clothes in a handkerchief on his arm. He said, "Boys, they have found Lassiter, and if I stay they will hang me," or "if I stay they will

try to hang me," am not positive which expression he used.

Sawyer further said that the old man told him that if he would swear that he (the prisoner) was home all day Monday, he would give him a negro fellow. Asked Sawyer if he had told anything about the gun before the jury of inquest. He said he commenced telling it before the jury of inquest and was prevented in some way, or thought he would have to go before the Grand Jury and would tell it there.

Cross-examined. Sawyer has been living with me since April last. He can neither read nor write, and used to ask my wife or myself to read his letters to him. Am acquainted with his general character in my neighborhood. Know no harm of him except that he drinks too much at times. My neighbors think well of him. Should have no reason to disbelieve him on his oath.

Asa B. Paul. Have seen a man, who they told me was Carawan Sawyer. He has been in my shop every day this week. He said he was in this case the main witness. He said, "I'm going to make money today."

Carney J. Armstrong. Saw a man they called Carawan Sawyer. Saw him in Paul's shop on Thursday. He said he was a witness in this case, and I told him he ought to be sober. He said, "Never mind, I calculate to make some money today."

Cross-examined. This was on Thanksgiving Day. Had knocked off work and went in there. Don't know who were in there—some of them were strangers.

REBUTTING EVIDENCE FOR THE STATE.

Thomas Bridgman (recalled). Have known Carawan Sawyer for more than five years, while he lived with his uncle. He stands as fair as any boy in the neighborhood; never heard anyone speak ill of it. His standing was like all boys growing up. He stayed at home and attended to his uncle's business pretty strictly. Have heard his character discussed as the main witness in this case, and the opinion of the neighbors was, that he would tell the truth. I should judge that he was held in good estimation by his neighbors.

Cross-examined. I would believe him on his oath. He might be bothered and make some mistakes, but I believe his intention would be to tell the truth.

Ruel Jordan. Was at Paul's shop on Thursday within a step of two of Sawyer, when it was said he spoke of being a witness and expected to make money that day. Did not hear the words. Soon after Sawyer went out Armstrong told me what Sawyer had said, but did not hear it.

Sawyer had been drinking. He too, two or three right smart bumpers.

Silvester McGowan. On Thursday I paid Carawan Sawyer part of his share of the reward which I had collected for the apprehension of the prisoner.

William J. Smith. Had a conversation with Tyson about this matter at my store. He was telling me about being summoned as a witness, and said all that he knew about it was what Carawan had told him. He said that Carawan had told him that Sawyer was a mean man. He told Carawan that Sawyer was not all the mean men in the world. Carawan said Lassiter was a meaner man. Tyson replied he had never seen Lassiter. Carawan said if you have never seen him I don't think you ever will. He said that Carawan had come to his shop to get him to tire his cart wheels.

Cross-examined. Thomas H. Smith was at my store during this conversation. It was since the murder was committed.

Mr. Rodman submitted to the Court that the counsel for the prisoner were entitled to the general reply, in the argument of the cause, on the ground that they had introduced no testimony except what was collateral.

The Solicitor replied that the universal practice in this State was against this.

The COURT decided that the State was entitled to the reply.

THE SPEECHES TO THE JURY.

Mr. D. W. Carter, the junior counsel for the prosecution, opened the argument in behalf of the State. He went into a thorough analysis of the voluminous testimony, reconciling its discrepancies, and tracing its connection, link by link,

with the guilt of the prisoner. His defense of his native County of Hyde against the charge of cruelty and oppression, towards the prisoner, was able and eloquent.

November 28.

Mr. Satterthwaite addressed the jury for the defense. He was in feeble health, having been confined to his bed all the day and two nights previous. By the assistance of *Mr. Bryan*, who read for him the cases to which he referred, he was able to speak and then closed from exhaustion. He made an earnest appeal in the prisoner's behalf, and expressed his firm conviction that Carawan Sawyer was a perjured witness.

MR. RODMAN FOR THE DEFENSE.

Mr. Rodman. Gentlemen: Though it has been my fortune several times in the course of my professional life to have appeared for the defense in cases of this sort, I can truly say I never rose to address a jury with so much anxiety and apprehension. I deeply feel my inability to perform the duty I have undertaken. I cannot but feel that upon the manner in which I shall perform that duty depends in some degree the fate of the prisoner, and of those whose fate is bound up with his. He himself is far advanced upon the path of life which leads to the grave. In the natural course of events, the period will soon arrive when he will be called to answer before a higher tribunal than this for the deeds done in the flesh. To him it is of comparatively but little importance whether his mortal life shall terminate now, or a few years hence. You have seen him attended in court by a wife and three little boys—the objects of his fondest love. The blow which severs the thread of his life will cast them forth upon the world—the orphan sons of a dishonored sire—and stamp upon their innocent brows the seal of shame which no radiance of hope, no smile of youth will ever efface.

Great as is the importance of this cause, and thinking as humbly of my own abilities as any man can, I should nevertheless approach it without anxiety or apprehension, if it were

not for some melancholy and peculiar features with which it is invested.

The law of North Carolina, while it is just, is humane. It requires that prisoners shall be kept comfortably, and shall be subjected to no other severity than is necessary for their safe keeping. You have heard how this unfortunate man was arrested, and what treatment he suffered under his arrest—how he was confined in a wretched hole, nauseous from filth, where neither the light of day, nor the blessed air of heaven could enter—how during a winter remarkable for the intensity of its cold, he was kept without fire; how he was excluded from the companionship of his wife, his friends, and his counsel; all from whose looks or whose words he could derive consolation or strength in those hours of darkness and despondency; how in his hearing he was reviled and denounced by all whose ignoble spirits could find pleasure in such a course. The counsel for the State, while he has extenuated, has not denied nor defended these things. But he asks, “Do they prove his innocence?” I might more properly ask, Do they prove his guilt? They prove neither. They prove nothing but the power of those unfortunate influences which surround this cause. I do not refer to them for proof, but for the admonition to caution, which they contain. In this day of intelligence and humanity, the processes of the law established by wise and humane men, for wise and humane purposes, in the case of this individual have been perverted to purposes of oppression and wrong; and that law, which we have been accustomed to boast was an impregnable shield for the humblest and poorest freeman against every species of wrong, in his case has been outraged and set at naught, and up to this hour triumphantly. This Court is but an institution of the same law, the most exalted, it is true, and to which from our infancy we have been taught to look as the last safe and undoubted refuge of the citizen. Let us beware, lest the same spirit which engendered the occurrences heretofore shall insinuate itself into our proceedings. Take warning, by the past, I beseech you, and suffer no breath of popular passion to enter the sacred enclosure in which you sit, and disturb the serenity of your judgment.

There is another most melancholy and unusual feature in this case, the contemplation of which appals and disheartens me. From the hour when accusation against the prisoner first found utterance, no period of repose has been allowed to the public mind, within which the excited passions might be allowed to sink into repose, and calm and enlightened reason resume her usual dominion. From that hour to the hour of this trial, rumor after rumor of what had been discovered, or what would be proved, each of the most dangerous and aggravated character, has been propagated through the length and breadth of the land. Whether this has been done of set purpose and from a systematic design to forestall your judgment and foredoom the prisoner, by depriving him of a fair and impartial trial, I shall not undertake to decide. It is sufficient to say that every idle story, every unfounded rumor, started no matter where, how, by whom, or for what purpose, has been rolled through the land, and gathering strength as it went—contemptible at first—has acquired in its progress stupendous proportions. I cannot hope that these rumors have left your ears alone inviolate. Would to God that I could be as certain that you could succeed in expelling from your minds every vestige of prejudice and prepossession against this unhappy man and his cause, as I am that you will honestly and conscientiously endeavor to do so. But it is not in the compass of human nature. We did not choose you believing you to be indifferent; but because we believed you to be honest and conscientious men, who would make every effort to become so. Never before, I assure you—and I say it with pride for my State—never before, when standing at the bar for a prisoner, have I felt the least apprehension but that, if I could invoke on his behalf truth and the law, in those mighty names I could open his prison door, and bid him depart unhurt. And could I know now, that you were men from some distant region, who had never heard of the prisoner or of this transaction, all my anxiety and apprehension would be exchanged for tranquility and confidence. But it cannot be so, and I can only conjure you, as I most earnestly do, to forget all you may have heard of this transaction anterior to the testimony

in the cause, and to enter with me upon the consideration of that, prepared and determined to give to every argument I shall advance in the prisoner's behalf, the full weight to which it may be entitled, and to give him the full benefit of every principle of law which shall receive the sanction of this learned and impartial Court.

What then is the issue which you are impanelled to try? Is it whether the prisoner has proved himself innocent of the accusation? God forbid you should make so fatal an error. Is it to determine who, among all the persons suspected, most probably killed the deceased? That would be equally erroneous. It is whether it has been proved beyond a reasonable doubt that the prisoner killed him. So sacred is human life in the eye of the law, that while in civil causes involving the most valuable interests a mere preponderance of proof, the mere inclining of the scale one way or the other, will justify a verdict accordingly, yet in all criminal causes, and more especially in all capital causes, the law requires full proof.

The Solicitor has invited us to abandon declamation and to meet him on the platform of the testimony. I gladly accept his challenge, and heartily wish that this issue could be decided there and upon that platform alone.

This is a case of circumstantial evidence. I will not detain you with any general remarks on the uncertain nature of this sort of evidence in general. The Solicitor in his opening remarks put it on grounds much higher than positive evidence; "Witnesses," he said, "may be biased, but circumstances can't lie;" and when my associate, Mr. Satterthwaite, read some cases of innocent men condemned by lying circumstances, we were told they were but the one or two selected from the immense mass of reported cases in the law. It would be no difficult task to find fifty as striking as those which were read. We have never contended that circumstantial evidence will in no case justify a conviction; we admit the contrary. We have only contended that where, as here, it consists of a number of unconnected suspicious circumstances, it is of a kind most apt to prejudice and mislead a jury, and requiring the utmost caution in its application. By the aid of experience, jurists

have erected certain principles and limitations as guides and safeguards in its application, which should never be forgotten. The only one of these I shall allude to at present is this: "That the theory of the prisoner's guilt must be consistent with every fact proved in the cause."

The theory of the State is, that the deceased passed the prisoner's house on the evening of Monday, the 15th of November, going along the road to the lake; that the prisoner shortly afterward left his house and went through what is called the cow range back of his house or along and behind the back fences of the field on the road, and catching up to the deceased, shot him at or near the two pines on the road. Assuming for the present that all the witnesses for the State are entirely credible, and all that they have sworn to is true, I propose now to examine this hypothesis—to compare it with all the facts as proved, and see if they can stand together; I shall do this calmly and dispassionately, for it is to your judgments I shall address my appeal, and not to your sympathies. The State alleges that the deceased was killed on Monday. The first evidence and the only direct evidence on that point, consists in the appearance of the body when examined on the ensuing Sunday, as detailed by the physician and Jesse Bridgman. They say that on Sunday the body looked fresh, was not swollen at all, and had no odor except of fresh blood.

Dr. Griffin, a scientific physician of great respectability, says that, judging from the appearance of the body alone, he should not have supposed that death had taken place more than four or five days before. The temperature from Monday was moderate; on Wednesday it rained, and the body was found buried in a low, damp place. Here is a combination of all the causes which promote decay most speedily. Is it not against common experience for a dead body to remain six days without swelling and without odor? I am not disposed to give too much weight to these circumstances, which may be fallacious, but so far as they go they tend to prove that the deceased was killed after Monday, and so far they contradict the theory of the State. I now proceed to consider the more im-

portant parts of the testimony ; but before I do so, permit me to make one remark, which may not be inappropriate.

The State presents each of its witnesses to you as credible and faithworthy, and if there shall be found a variance between them in any essential point, if, for instance, one of them shall name a certain hour, as the time of a certain event, which hour is incompatible with the guilt of the prisoner ; and another witness, equally credible, shall name a different hour, as the time of that event, which is compatible with the guilt of the prisoner, and there being no reason to fix on one hour rather than another—I am entitled in a case of this sort, upon every principle of humanity and of law, to assume that hour as the true one, which is most favorable for the prisoner. I may not have occasion to resort to this principle, but it is convenient to state it. If the State's witnesses differ on any essential point, there is doubt at once, and seriously to doubt is to acquit.

I propose now to trace the deceased and inquire whether it is possible that the prisoner crossed his path. He left Dorset Mason's some time on Monday morning. He took dinner at Thomas Bridgman's, and left his house at three o'clock or a little later, walking along the road towards the lake. Thomas Bridgman is a witness for the State, and a man of excellent character. His testimony was given in, in a way which commanded the respect of all of us. He is a farmer and a woodsman of great observation and experience ; and it is well known that persons who are in the habit of judging of the hour of the day without a time-piece and by observation of the sun alone, arrive at it with astonishing accuracy. His attention in this instance, he says, was especially called to the time ; for he says he had work to do which was urgent, he was restless, and anxious for Lassiter to be gone. You might rely safely on his testimony as to time, even if he stood alone and unconfirmed. But his testimony is confirmed on this point, in an incidental and wonderful manner, by Thomas Gibbs, another witness for the State, an old man too, of equal observation and experience, who can be charged with no sympathy for the defendant, for

although neighbors, they have not visited and have been at enmity for years. Let us follow Lassiter. After leaving Bridgman's, at three o'clock, or a little later, he stopped at Thaddeus Brown's about five minutes, and at Thomas Gibbs' ten or twelve minutes. From Bridgman's to Gibbs' is three-eighths of a mile, which it would take him about ten minutes to walk. This ten minutes added to the five minutes he stopped at Brown's, and the twelve minutes he stopped at Gibbs', would make 27 minutes, or make it about half-past three when he left Gibbs'. Now Gibbs says that when he left his house the sun was about an hour and a half high. The sun set on the 15th of November, in the latitude of Raleigh at four minutes past five, and where these occurrences took place some minutes earlier. Lassiter left Gibbs' then, at half-past three o'clock. This cannot be doubted; it is proved by two respectable witnesses for the State, and confirmed by the comparison of a number of minute circumstances coming out in their testimony, altogether undesigned in that view, and the bearing of which they could not see. Seldom is an important fact so indisputably demonstrated. What, then, became of Lassiter? He was seen no more alive, and over the scene of his death hang darkness and mystery; but we may follow him at least a little way with almost perfect certainty. He was bound to the lake, to whose house particularly we do not know; but from Gibbs' to the nearest house beyond was over two and a half miles; the way was lonely and desolate; the day was blustering and bitter cold; the shades of night were gathering over the earth; he had no motive to loiter, and if we are to believe that he really entertained fears that the prisoner would attack him on that road, as he told Mason he did, he had every motive to hurry him on his journey; he was young, athletic and active, unencumbered with any burden except a small carpet bag; the road was firm and level. Under these circumstances, may we not conclude with almost positive certainty, that after leaving Gibbs' he traveled as rapidly as he could, and that in an hour, or hour and a half, had not death intercepted his progress, he would have traversed the two and a half miles between him and the lake, or at least, have gone

much farther than the two pines which are less than one mile and five-eighths from Gibbs'

Let us leave the deceased now in the darkness and mystery into which he plunged after leaving Gibbs', and into which it is much to be feared, that no ray of human testimony will ever penetrate, and come to the prisoner.

Lassiter left Bridgman's house at half-past three, or a little later; he must then have passed the prisoner's, which is 239 yards beyond Bridgman's, a little later still. Carawan Sawyer says the deceased passed the prisoner's house about 2 o'clock. But without adverting at all to the principle I have already stated, can it be doubtful whether you should take the hour stated by two witnesses for the State, such as I have described them, and corroborated as I have shown their statement to be, or the hour stated by this young man, without education, observation or experience, having no reason whatever to notice the time, and uncorroborated by any circumstance whatever? You will notice I am now giving to Carawan Sawyer the benefit of equal integrity with the others; his right to that benefit I shall discuss hereafter. This point as to the time, then, may be regarded as settled. Sawyer says that the prisoner was in his own house when Lassiter passed; that he came out in about 20 or 25 minutes after Lassiter passed, and went through the fields to the woods, being followed by his wife, with a gun. It is only with the question of time I am now concerning myself. The prisoner then, it is said, left his own house for the purpose of intercepting the deceased, about the time that the deceased left Gibbs', as near as can be ascertained. Now arises the important, the vital question, whether, considering the distance and the character of the way which each had to traverse, it was possible for the prisoner to have intercepted the deceased. The inquiry is minute and tedious, I admit, but I flatter myself the result will be worthy of our patience.

The deceased, we have seen, was young, active, unencumbered, having a smooth, firm way, and every motive to urge him to moderate speed, and having to traverse only up that one and five-eighths of a mile to reach the two pines.

The prisoner, we are informed, is 56 years of age, retaining the strength of manhood, but having long since lost the activity of youth. He is "clumsy"—that is absolutely the word used by the witness in describing him. In May last, Mr. Albin Swindell, a witness for the State, by his own admission unfriendly to the defendant—and it is a circumstance most remarkable and indeed singular to this cause, that so many of the prisoner's most bitter enemies should have been selected to make examinations for the purpose of testifying, which might just as well have been made by fair and indifferent men. Mr. Swindell, however, in company with Topping Day and others, in May last, after the importance of this question I am now discussing was ascertained and with a view to its solution, and for the purpose of testifying in this cause, made a diligent and careful examination of the country back of the defendant's field, through which it was supposed by all the neighborhood, the prisoner must have passed, if he passed at all; his particular object was to ascertain the quickest route from the back of the prisoner's field to the two pines or their neighborhood. He was kind enough in the course of his examination to mark out on the maps which I hold, the line which he found to be the quickest possible between the two points. You will perceive that it begins at the prisoner's field, going off from the road to Swan Quarter, while Topping (also a State's witness), said the cow paths inclined towards the Swan Quarter road, which would make the distance longer than Swindell has represented it. I mention this, simply for the purpose of showing you that if Sawyer has committed an error at all in his line, it has not been in favor of the prisoner. All the witnesses say, that it is impossible to pass in anything like a straight line from the prisoner's to the two pines, on account of the density of the undergrowth. Bridgman says it would take two-thirds of a day to do so. Until this trial, no other route has ever been at all possible, except the one drawn by Swindell; now indeed, it is suggested that a possible route might be found along the back of the fences, but it will be sufficient to condemn that suggestion that if feasible, it would have occurred long ago to some one of those numerous active

prosecutors residing in the neighborhood and familiar with its every nook and cranny, and most earnestly desiring the conviction of the prisoner.

Moreover, the prisoner, in passing along that route, would have exposed himself to have been seen by Thomas Gibbs, who was that very day engaged in sowing wheat in the back part of his field, and of Jesse Jarvis, who lives in the very back line of Gibbs' field. The impracticability of that route is so clear that I shall waste no farther observation upon it, but confine myself to that which Swindell has pointed out. Some or all of you may be familiar with the sort of country he describes this to be. It was burnt out some years ago, and since that time has put up in places with bay bushes, gallberry, cat-claw briars and bamboo, through which no man can pass, without slowly and laboriously cutting or breaking his way; in other places the burnt soil has become sterile, and is covered only with a thick and yielding moss; these open places, he says, are generally connected with each other, so that a man perfectly familiar with the woods might in a great degree, except in one place where the fire stopped, avoid the impassible thickets of briars and vines. But to say nothing of the sinking-in the moss, you must recollect that in thus winding and twisting about, what a man gained in ease, he would lose in distance, which would be greatly increased, and it is extremely doubtful whether anything would be gained in time. Such was the character of the route which the prisoner must traverse, as compared with that of the deceased; and in distance, without computing the minute windings, which would be so important in fact, it was nearly or quite half a mile longer than that before the deceased.

Bridgman says he could not travel that route in less than one and a half or two hours; and the prisoner is not more active than he is. Day thinks it could not be done by an active, unencumbered man in less than one hour. Topping agrees with him, and even Swindell does so too. The State, indeed, professes to give superior weight over these witnesses to Jarvis, who, speaking from no special examination, but from his general knowledge of the country, merely says it might be

done in half an hour; but it is too obvious that he is not entitled to any superior credit; nor can the State insist on it.

You are now in a position to decide whether it is likely that the prisoner, encumbered by a double-barrelled gun, could have intercepted the deceased—whether it is not impossible, or at least, greatly improbable, for that is all I am bound to make out. Is it not morally certain on this proof that if the prisoner started with the view of meeting and attacking the deceased, some other hand anticipated the deed? But I have not yet done with this question of time, nor even yet presented it in its strongest and most conclusive point of view. We have seen the prisoner leaving his house; now, at what time did he return? As Sawyer is the only witness who speaks of his going, so he is the only one who speaks of his return. On every other occasion, when this witness has related this transaction, up to this trial, including his conversation with Ira Topping last spring, he said the prisoner returned by half an hour before sunset; on his examination in this trial, he departs from that time, and fixes the period of his return at sunset. I shall show you hereafter how this change was found out to be necessary, and why it was made. Without at present impeaching the integrity of this witness, I might well argue that his repeated former statements, sworn as well as unsworn, were more likely to be correct, but I am able to be content with the time he now fixes.

The theory of the State then requires that the prisoner should have gone over this route I have described; have intercepted the deceased and slain him; have disposed of the body (I care not how, for whatever mode he adopted must have taken some time) and have returned in an hour or an hour and a half: a thing which, if the witnesses for the State are to be believed, is a clear physical impossibility, or, to undertake no more than is imposed on me, is in the very highest degree improbable. Is the theory of the State as to the prisoner's guilt consistent with all the facts? Do not the very facts most clearly demonstrated stand in hostile and irreconcilable contradiction to this theory?

I proceed now to consider some suspicious circumstances

which have been greatly relied on by the State. They are suspicious circumstances and nothing more; sufficient to put a person on trial, but not sufficient to convict him; they may confirm a case which is already proved, but no number of such can ever amount to proof. Unfortunately there are too many such in this case, which give a delusive appearance of guilt, which vanishes, however, as soon as the circumstances are fairly weighed and considered.

The Solicitor says he has proved that the prisoner had a motive to commit the crime. I care not what provocation the prisoner may have had to commit the crime. I care not even if he even desired to commit it—if he had not the opportunity or means to commit it, he did not do it. The Solicitor has introduced Albin Swindell, Bartholomew Swindell, Thomas Smith and William Tyson to prove a motive. If the deceased was guilty of the conduct of which the prisoner complained he was, then he was very little worthy of the sympathy which has been excited in his behalf. Boarding in the prisoner's house, he takes advantage of the situation which the confidence and kindness of the prisoner had permitted him to occupy, and, while the prisoner is absent on his ministerial duties, seduces his wife. When the prisoner on his return mildly complains, he assails the prisoner's life; and when the prisoner expels him from his house, he curses him in the road, and challenges him to combat; and finally, when the prisoner bewails to his friends the ruin of his domestic peace, he sues him for slander and lays his damages at \$2,000. I can conceive no combination of outrage and insult greater than this. To some men such motive might have been ample. But the same provocation operates differently on different men, and differently on the same man at different times. And the question here is, not what in the abstract would be the effect of such provocation on man in general, but the more practical one, what was actually its effect on the prisoner? We must consider his age, his sacred calling, and the peaceful creed to which his mind and feelings had long been disciplined and which he professed at least, to inculcate by word and example. It appears to have excited in his mind no emotion of vengeance; he used

no expression which fairly construed, amounts to a threat. (*Mr. Rodman* here went into a minute examination of the testimony of Albin Swindell, Bartholomew Swindell, Thomas H. Smith, William Tyson and of Mr. Banks, contending that to regard them as threats would be a very strained construction, and that the testimony of Tyson was unworthy of belief.) He seems rather to have regarded the wrong as a thing which when done could not be redressed, to have submitted to it in silent grief, and to have been plunged into the profoundest gloom and despondency. Observe him as described by Banks. He neglects his professional appointments; he shuns the society of his friends, and their festive meetings; he retires to his boat and yields himself up a submissive victim to consuming grief. He complains that the public had turned against him, and seems to have resolved to abandon the unequal contest, to abandon his country, to fly from the acknowledged enemy and the domestic traitor, and to commence in the distant West, where his dishonor should be unknown, a new chapter in his life. Can we say that the outrage which he did not regard as a sufficient provocation to violence when it was fresh, and when violence would have been justifiable, was such, that it must of necessity long afterwards have driven him to murder? And can we suppose that the mere service of a civil writ, which the prisoner well understood, and from which he did not anticipate any injury, could have produced that reckless desperation which the seduction of his wife and the assault upon his life had failed to do?

The shot are exhibited with great parade, and we are told that those extracted from the body correspond with those extracted from the prisoner's gun, there being three sizes of each. The answer to this is easy. In a country neighborhood like that, everybody buying from the same store, buys of necessity the same sizes of shot; and everybody mixes his shot, because it is well known that most guns shoot better with mixed shot. If all the shot from the body had been produced, instead of four only, and all from the gun, instead of four or five only, and the proportion of the different sizes in each had been the same, the argument would have been strong; because

although everybody mixes shot, it is not probable that they would mix them in precisely the same proportions. But this has not been done. An important piece of testimony in the power of the State, to have been produced, has been withheld—I do not say from any wrong motive, and I care not whether by accident or design. But the prisoner was entitled to the benefit of it; and in such a case I am justified by the law in assuming that the portion of the testimony withheld would have made for him; and that, if the whole of the shot had been produced, the different proportions of the two mixtures would have negated any identity of source.

We are told the prisoner fled, and his flight is evidence of his guilt. That depends on circumstances. Flight before accusation is strong proof of guilt. But when not only has accusation been made, but great indignation has been studiously excited, and judgment has been pronounced before proof—when the accused has reason to fear every barbarity from an infuriated mob—flight is no proof of guilt. When the law is nullified by popular opinion, as innocence is no defense, the most innocent may dread and the bravest tremble. Flight under such circumstances is not confession, but simply prudence.

If flight is evidence of guilt, what is a voluntary return? Surely that is evidence of innocence. Only he who is proudly conscious of innocence and confides in the protection of the law will voluntarily return to meet certain imprisonment with all its hardships, and certain trial with all its disadvantages.

As to the letters found in the prisoner's dungeon, admit that they proved a desire on the part of the prisoner to have the witness Sawyer removed, and to suppress his testimony. It was because he thought he was in the hands of his enemies, who were drilling him to falsely swear away his life—a fear which the events of his trial have too strongly confirmed. He knew the witness was weak, pliable and might be moulded to any purpose. It is in the nature of man to conform his resistance to the nature of the attack that is made upon him. The conduct of the assailant constitutes the laws of war. It is natural to repel open force openly; law by law; fraud by

fraud; and to use a common phrase, "to fight the devil with fire." Christianity may teach patient submission to every-wrong; but who will blame the prisoner if, to repel subornation of perjury, he attempts to suppress the perjured testimony? It was the perjury he dreaded, not the truth.

Observe, too, the circumstances under which these papers were written, when the prisoner was being treated with every refinement of cruelty, when he was deprived of intercourse with friends or counsel, and when he was reduced to a state well nigh bordering on madness. They were the obscure and incoherent ravings of desperation, produced by a sense of grievous wrong and the hopelessness of contending with it.

My argument hitherto has been founded on the assumption that all the witnesses for the State were credible, or at least were not wilfully false. Carawan Sawyer has been termed by the Solicitor, with great truth, "the principal witness." Without his testimony some circumstances apparently suspicious until examined are all that remain; without him there is no proof or anything pretending to be proof, connecting the prisoner with the homicide, or showing that he had the means or the opportunity to have committed it. This must in fairness be conceded. It is then a very grave and important question, what credit is due to this witness? I think we are justified in saying in any case, more especially in such a case as this—none. In the first place, it must be remarked that his testimony in all its material parts stands alone and entirely uncorroborated. In the second place, it is intrinsically most improbable. It is most singular and incredible that the wife of the prisoner, who is not proved to be left-handed, and is therefore, presumed to be right-handed, as the great majority of the world is, should have carried the gun in her left hand, her left side being exposed to the witness, more especially when her object was concealment, as is shown by her concealing it in her apron, and when by carrying it in the natural and ordinary way on her right side it would have been effectually and completely concealed: it is very singular that when she attempted to conceal it with her apron, she should not have concealed it entirely but should have, as it were, purposely

defeated her own purpose, by leaving the breech exposed. These contradictions impeach in the strongest manner the credit of the witness; but I shall presently account for their being a part of his story, by showing at what time they were interpolated, and that then in no other manner than by such absurd inventions could his story have been patched out to make good this charge.

A witness who has been convicted of perjury, on grounds of public policy, and for the safety of citizens, is not allowed to be heard by a jury, and I assert it to be a principle of law, for which I ask the sanction of this Court, that a witness who appears upon a trial to have sworn upon a former judicial inquiry or to the same matters differently in a material particular, from what he swears to upon the trial, and to have varied corruptly, is convicted of perjury in that trial, and is equally to be disregarded as if he had been convicted of perjury, and sentenced of record. I further assert under the same sanction that if upon this trial the witness Sawyer falsely denied having told to Moore, Bridgman, Brooks, Topping and Armstrong, or to either of them, what they say he told them, he well knowing, that he had so told them, then in like manner he is convicted of perjury on this trial, and his testimony is to be entirely disregarded. For these positions I cite the case of *State v. Jinx*, 1 Dev. 508. The prisoner there was a man charged with rape on Mary Rittenhouse, a white woman. He had been tried once and convicted, and a new trial granted. On the second trial Mary Rittenhouse swore differently from what she had done in the first. The Judge below told the jury in substance that this contradiction went only to her credit, and they might believe part of her story and reject the rest. They convicted the prisoner and upon appeal, Henderson, Judge, said: "But when once they (the jury) are satisfied of the witness' corruption, they are bound in obedience to the law to disregard all that he swore to. For the law does not act upon a jury's bare belief; their bare opinion of the fact; their belief must be founded upon that which is regarded in law, as testimony. Hence, the jury are not permitted to hear a witness that is not sworn, al-

though they might possibly believe him. So also, they might believe persons convicted of an infamous crime, perjury for instance, but such persons are not allowed to be heard before a jury. I can see no difference in principle and if so there should be none in practice between a person heretofore convicted and one who stands convicted before the jury in the case they are trying."

You cannot doubt, because Sawyer himself admits it, that when he was sworn before the coroner's inquest—and he was sworn then as now to tell "the whole truth"—that he said nothing about a gun, can you doubt that if he really saw a gun and that it excited his attention as he says it did, and as it must have done if it was held and concealed as he says it was, can you doubt that in testifying before the coroner so shortly after the event, when the transaction was fresh in his mind, he must have recollected it? Indeed, he says, he recollected it, but kept it back to tell before the Grand Jury. How did he know it would go before a Grand Jury? That was the very inquiry before the Coroner. Rather can you doubt that his testimony then was true, and his testimony now is false and corruptly so? At all events, both stories cannot be true, one must be false and corruptly so, for the variance is of a character which the highest charity cannot impute to mistake.

Again, can you doubt that he held the conversations with Moore, Bridgman, Brooks, Topping and Armstrong, which they respectively testify to, and that he remembered them? His first conversation with Moore was of a nature he could not forget, and it has been several times recalled to his memory since. It is now said for the witness that in that conversation, he was telling a lie under the influence of the prisoner. If so, and it has slipped his recollection under the circumstances, which have since taken place, a lie must be to him the most familiar and ordinary of all occurrences.

I claim now the benefit of the principles of law I have stated and as the witness stands convicted of perjury before you on this trial, that his testimony shall be entirely rejected from the case.

There is another principle of law for which I ask the sanction of the Court to guide your deliberations. In a capital cause you ought not to convict on the testimony of a single tainted witness. If the position stood unsupported by authority, it would commend itself by its own merit; for as you must be satisfied beyond a reasonable doubt, you cannot be so satisfied on the testimony of a witness whom you know to be a liar, though you may not know he is lying in this particular case.

If ever there was a witness who could be called tainted, it is the witness Sawyer. It is true we did not attempt to prove that he had a general bad character for truth, and a faint and unsuccessful effort was made by the State to give him a good one. But it is evident that he had acquired no general character at all. He has not even yet attained the age when by law he is his own master, and can make his own bargains; his life has been spent in the obscurity and retirement of his uncle's farm; he has had no occasion to mix with the world, and whatever his native disposition may be, it is undeveloped or at least certainly unknown beyond the circle of the household in which he has lived. We have adopted a much stronger method of impeaching him; we have shown that he has never been able to tell this tale twice in the same way. He told Moore on Saturday morning that the prisoner was at home all day Monday, Tuesday and Wednesday and he knew it. And at this time, so far as we can see, he was under no inducement to swerve from the truth. According to his own account, this was before the prisoner offered to bribe him. If it was a lie it was a voluntary one. Now he not only swears the prisoner was not at home on those days, but that he never told Moore that he was. Again, on Saturday evening at the prisoner's bars he goes to Moore and tells him he had made a mistake, that the prisoner was not at home all day Monday, that he went off with the cart to get a load of corn, and returned with the second load. He now swears that he told Moore no such thing. Both these statements exculpate the prisoner absolutely. But the Solicitor says that before this last statement to Moore was made, the prisoner had offered to bribe

him, and that he was lying under the influence of that offer.

But as the witness told Topping so late as last spring, this offer to bribe was not made until the prisoner met him in the woods as he was going off, which was several hours after Moore left. And it is very singular that under the influence of an offered bribe he should tell a lie, but not the lie that he was bribed to tell.

These in truth were the statements of the witness before he had been subjected to any improper influences. With the departure of the prisoner commences a new scene. The enemies of the prisoner take possession of this weak-minded and foolish boy. The work of his tuition begins, and we shall see how, just as the necessity is discovered, fact after fact, or rather invention after invention, is patched on to his story until it is presented on this trial as the complete and perfected production which is to envelope the prisoner in its mortal folds. He is first taught to regard his benefactor, who had taken him into his house when he had neither parents nor friends, and for ten years had treated him as his own child, with hostile and malignant feeling. This is evidenced by his conversation with Thomas Bridgman, a few days after the prisoner's departure. In the meanwhile the witness is sworn before the Coroner, and there says the prisoner had no gun. The enemies of the prisoner were so blinded by malice that their capacity was at fault. They had not yet discovered the necessity of proving that the prisoner had a gun. Then comes the third conversation with Moore, in which he again said that if the prisoner had a gun, he did not see it, and he did not know where the gun was.

Then probably occurred the conversation which Brooks heard, though Brooks thinks it was in December and after the witness had been sworn before the Grand Jury. In this conversation he says again that the prisoner had no gun when he went to the woods, and being asked how he supposed he got the gun, he replied that he did not know, unless he had carried it out in the woods the night before, or before day, that day. But Court comes, it is discovered that the prisoner must be supplied with a gun, and forthwith he is supplied. The

witness had sworn before the Coroner that the prisoner had no gun, he had said that he did not know where the gun was, but he had not sworn that before the Coroner, probably because he had not been asked. The witness comes to be examined before the Grand Jury, and he is asked "if any one else had a gun," a singular enough question truly; and then the oath before the Coroner is patched out with the invention that the wife had the gun, to which must be added in due time, to sustain it, the absurd story that she, a right-handed woman, carried it in her left hand on her left side, concealed in her apron, with the breech exposed. So devious are the paths of fiction: circumstances must be paired together, which cannot be matched, and which show by their repugnancy, that they have no kindred with each other. The coins from the mint of truth are all alike and stamped with the impress of the same sovereign features.

But let us pursue the witness. He tells Thomas Bridgman afterwards that the prisoner wore back the same clothes that he wore off on Monday. Now he says he does not recollect about that; he did not notice his clothes. You will perceive that this failure of recollection is to let in the "double-wave blue mixed," fiction of Bartholomew Swindell, who recollects distinctively the clothes the prisoner had on, on Monday and Tuesday, even to the hole in his hat, but does not recollect what clothes any other person that he met on those days had on, nor even what clothes he wore himself. The witness further tells Bridgman that the prisoner got back, half an hour by sun on Monday, and that he himself went into the kitchen on his return from Bell's on Monday night, though he now says he did not. To Ira Topping so late as last spring, the witness says that the prisoner got back half an hour by sun on Monday. Indeed he has stuck to this throughout, until this trial, and it is the only particular in his whole testimony that he has stuck to. One would suppose it would be indelibly impressed on his memory and that shame alone would compel him to adhere to it. But, as if to show that he is as insensible to shame as to truth, and to destroy the last particle of claim he had to credit, he now abandons that and says the prisoner

did not get back until sunset. This sacrifice was made with reluctance no doubt; but I shall show you how it became necessary. These surveys and examinations of the locality were not made until after the conversation with Topping; the importance of time had not become apparent; it had not been seen that the prisoner could not have performed the feat assigned to him within the time allotted. But the surveys were made in May last; and it then became evident that the time must be prolonged, or else all the labor had been in vain; and it is prolonged accordingly.

If you are not already satisfied of the corruption of this witness, permit me to call your attention to a most significant fact. The witness McGowan mentioned the names of all the captors of the prisoner that he could recollect and he did not mention among them the name of Sawyer. Yet when this same McGowan is called in again to explain the declaration of Sawyer, made during this trial in presence of Armstrong "that he was the material evidence in this cause, and that he expected to make money that day," he explains it by saying that he paid Sawyer that day a part of his share of the reward as one of the captors of the prisoner, and that he paid all the others some time ago. Now, if Sawyer was really one of the captors of his uncle, and entitled therefore to a part of the price of his blood, why did not McGowan mention his name among them, when the circumstance of the payment must have made it fresh in his memory? If he was not one of the captors—and in kindness to him I am not willing to believe that he was—why was he paid a part of the reward? In either case, why is his share withheld so long after all the others have been paid, and paid to him on the very day that he is expected to testify, and on which he probably would have testified but for his besotted and drunken condition at that time?

I take leave of the testimony of this witness. The Solicitor said he would not take you through any dark and labyrinthine way to a verdict of conviction. Is such testimony that clear and open road through which alone you can safely walk up to so dreadful a conclusion?

I now take leave of this case. I have endeavored to discharge my duty to the best of my ability; to say neither too little nor too much. Where I thought the witnesses were mistaken, I have said so, and no more. I have thought one witness was perjured, and I have not hesitated to say so. I will go out of my way to denounce no man in any case, but I will always fearlessly assert what I believe is proven in the cause. With one word more I shall leave the prisoner in your hands. It is possible that when you retire there may be a difference of opinion among you, in such a case, what is your duty? I will give the reply by reading from the opinion of Judge Ruffin in *State v. Ephraim*, 2 D. and B. 174. "If twelve men indifferently chosen after full argument and instruction from the Court upon the law, and opportunity for full deliberation be not agreed of the guilt of the accused he ought to be acquitted."

November 29.

Mr. Bryan closed the argument for the prisoner. He dwelt upon the uncertainties of circumstantial testimony, and urged the jury to beware lest they should commit a fatal error. He attacked the testimony of Carawan Sawyer, the principal witness for the State and grouped his contradictory statements, ten in number, at much length and with great force.

MR. WARREN FOR THE STATE.

Mr. Warren. Gentlemen: It falls to my lot to address you at the last stage of this important cause, and to close the argument in behalf of the State. I know you are greatly fatigued by your long confinement and close attention throughout the progress of this trial. But I know also, that you will hereafter feel amply repaid for the labors you have undergone, by the consciousness that you have done your duty, and given the case that full and fair consideration which its importance deserves. I know, too, you will give me a candid and patient hearing.

It is unpleasant, gentlemen, on an occasion like this, to be compelled to allude to matters of a personal character. But

the course pursued by the prisoner's counsel has left me no alternative. We have heard complaints here not only of the appointed officer of the State, but of those who assist him in this prosecution. We have heard from the counsel who first addressed you for the defense of "hired witnesses and hired attorneys." He informed us also that this prosecution had been conducted in such a manner as to shock his delicate sensibilities. From him, who closed the defense, we have heard that the State has practiced a discreditable system of humbug and deception. I hardly know how to meet charges of such a character. The State is represented here in part by its sworn officer, bound by the same solemn obligation that rests upon you, and answerable not only at the bar of public opinion, but at the bar of justice also, for the manner in which he performs his official duties. As for myself, it is perhaps enough for me to say that whatever I have done in connection with this case, has met his full sanction and concurrence. I leave it for you to decide whether or not I have discharged my duty and come up to the grave responsibilities I have assumed. I profess to know something of what my duty and my profession require of me, and of what my own self respect demands at my hands. But if I do not, gentlemen, if on this subject I need instruction and enlightenment, assuredly I shall not asked it of the feed counsel of the prisoner at the bar. Let them put their advice and their denunciation in the same pocket with their fees.

Before entering upon the argument of this case, I desire to call back to your minds to what I conceive to be the issues you are called upon to try. We have heard eloquence and rhetoric, and rhetoric and eloquence enough to acquit the prisoner at the bar, if rhetoric and eloquence could avail him. We have heard of a systematic persecution of the prisoner, commencing with the time when this murder was committed, and continued down to the present moment. We would suppose that not George W. Carawan, but the State's counsel, the witnesses for the prosecution and the people of Hyde were on trial here for high crimes and misdemeanors. What have we heard but denunciations against the whole people of Hyde?

The charge, when reduced to a definite form, amounts to this: that the witnesses have been guilty of perjury, and the rest of the people of that County of subornation of perjury. We have heard more than this; that the prisoner has been foully and barbarously treated—that the Sheriff of Hyde is an inhuman wretch—that he confined the prisoner in a loathsome dungeon, without light or air, or fire, or intercourse with his fellow-men. For what purpose these things have been wrought up, and dwelt upon, I do not know, nor have the prisoner's counsel deigned to inform us in what way they affect the guilt or innocence of the prisoner at the bar. If they had any bearing on that question, the facts are untrue. The evidence is, that he was confined in the dungeon, it is true, the safest apartment of the jail, without fire, but with a comfortable bed and that he was supplied with light both night and day. Ah! gentlemen, one important fact I had nearly forgotten. It is said that a very respectable member of the bar vomited there while visiting the prisoner. But we have not heard that the prisoner or his counsel were so seriously affected. They may congratulate themselves on having stronger stomachs than some of their professional brethren. They complain also that the State has suppressed testimony, which would make in favor of the prisoner, while it has most carefully gathered together every fact and word, and circumstance which makes against him. What would they have? Do they wish us to call the prisoner himself upon the stand—to allow him to make testimony for himself after the fact? My purpose, gentlemen, in noticing these things, is to relieve your minds and clear the case of all those collateral issues, which the prisoner's counsel have sought to throw around it. Again I ask, what they have to do with the guilt or innocence of their client? And I ask his Honor to charge that there is no evidence of any persecution, no evidence of conspiracy, no evidence of bribery, no evidence of barbarous treatment of the prisoner. All these things exist only in the imaginations of the prisoner's counsel and are thrown in to support a defense which needs all the succor that ingenuity or art can suggest.

But, gentlemen, what is this case and what are you to try? Whether or not the prisoner is guilty of the crime of murder. It is not whether public sentiment may be against him, for it would be strange indeed, it would argue a strange state of public feeling, a disordered state of the public mind, and a most infamous state of public morals, if public sentiment were not against one who had committed so horrible a crime.

The evidence in this case discloses a murder as foul and atrocious as can be found in the history of crime. A fellow-citizen in the vigor of his years, in the enjoyment of life, in the innocent pursuit of his avocation, is waylaid and assassinated in the public highway. Without a moment's warning, without time for the briefest prayer, he is sent into the presence of his Maker. His body is dragged into a dense and almost impenetrable forest, and there most carefully concealed and buried. No trace marks the spot where he fell. No track points the way to his hidden grave.

Gentlemen, the bare mention of such a crime as this would be sufficiently startling anywhere. Even the offenses which disgrace the records of a city court, where robbery and bloodshed and murder run riot, are insignificant when compared with this. But here, in a peaceful and quiet community, where the laws that protect human life are so seldom violated, it is calculated to fill the public mind with horror and alarm. With such a crime the prisoner at the bar stands charged.

There is no question here as to the degree of this homicide. The prisoner at the bar either did not kill Lassiter, or he is guilty of murder. He is either guilty of murder or he is not guilty at all. Counsel do not pretend, as much as they have sought to excite sympathy for the prisoner and indignation against the deceased, that there is any justification of the crime, or any circumstance that can possibly mitigate it to a lesser degree of homicide. No, gentlemen, all the abuse that has been poured out in such torrents on the deceased, all the talk of adultrous intercourse, all the eloquent denunciations from the law of Moses, are foreign to every legitimate issue of this case. Although it is important to remark that by their course of argument the prisoner's counsel have supplied for

us what they deny we have proved by the witnesses, a motive on the part of the prisoner for the commission of the murder; yet it is proper for me to say that there is not the slightest proof made, or attempted to be made, that Lassiter ever had criminal intercourse with the prisoner's wife. His counsel have suggested it, not as a defense, for they know it can not avail them, but with the sole object of operating on your sympathies and feelings.

Now, gentlemen, what are the defenses which are set up and relied upon by the prisoner's counsel? If I understand them, they are these: First, that the evidence, supposing it to be true, is not sufficient to warrant a conviction. Secondly, that it comes to us out of the mouths of perjured witnesses.

If I have omitted any ground on which they rely, I wish them to state it now, as I do not desire to do them injustice. Having no other ground, they necessarily admit, and no logic can evade it, that their complaints of the State's counsel, the cry of persecution they have raised, or the indignation they have uttered here, all the denunciations they have thundered forth upon the people of Hyde, all the abuse and vilification of Lassiter, and the emphatic repetition and endorsement of the language of the prisoner that "he ought to have been shot and shooting was too good for him"—that all these things are not pertinent to the case and form no legitimate part of the prisoner's defense.

You have heard a great deal, gentlemen, during this trial—more, probably, than in all your lives before—about circumstantial testimony and have heard read cases of the most affecting character, where juries rendered incorrect and mistaken verdicts, based on such testimony. Many of these were read by the eloquent counsel who last addressed you with great "discretion and emphasis." It was from him the charge of humbug came. Gentlemen, I know what I say, and I know also under what responsibility I say it, when I tell you that there is not a respectable lawyer in North Carolina who, when he reads these cases for the purpose of operating on the minds of the jury and weakening their confidence in the force and effect of such evidence, does not laugh in his sleeve. I throw

the charge of humbug back upon him; let him digest it as he can.

What is circumstantial evidence? It is the evidence of facts which, according to the course of human experience, usually, and almost invariably, accompany an act. It is (for the purpose of this case) the evidence of such facts as usually precede, follow and attend the commission of a crime and from which that crime (as the homicide here) may be inferred.

We are here met at once by the assertion that evidence of this kind is not to be acted on by a jury—that it must be, from its very nature, unsafe and unsatisfactory. Yet, gentlemen, we act upon it in all the affairs of life, in all our transactions with the world, with this difference: that it is not verified by an oath. And nothing is more common than cases of circumstantial evidence, both civil and criminal. All our courts constantly act on it. There is no administering the law, especially the criminal law, there is no preserving the peace of society, there is no protecting of life and property, except by applying the rules of circumstantial evidence in courts of justice. If a man commits theft, he does it, not in the presence of his fellows. If he commits arson or burglary or robbery, he takes no witness with him to testify to the act. If he commits murder, if he coolly and deliberately plots the crime of blood, he seeks to perpetrate the crime where no eye can see him and where no human sagacity can follow his footsteps. How can he be detected or brought to answer to justice and the violated law except by administering the rules of circumstantial evidence? But I desire to set this whole matter at rest. I shall not read cases to shake your belief in either kind of evidence. Omniscience belongs only to God. We can not arrive at infallible truth in any verdict, whether based upon positive and direct or on circumstantial testimony. Infallibility belongs not to man, but only to a power infinite in all its attributes. We are compelled to put trust in human testimony, but can not be absolutely certain of our judgments. All the law requires is that you should be satisfied in your own minds beyond a reasonable doubt. You

must see that the facts and circumstances of the case are inconsistent with the innocence of the accused. The law does not require, as prisoner's counsel have told you, that you must be satisfied beyond all possible doubt, for that you can not be from merely moral evidence of any kind. It is beyond a reasonable doubt. And what is that? Not a trivial doubt; not a vague, floating, indistinct suspicion of the mind, but a substantial doubt, such as men act on in the important affairs of life. This the law regards as a reasonable doubt.

They have laid down another principle of law on this part of the case. They have told you that the circumstances must be so strong and cogent as to exclude every other possible hypothesis than that of the guilt of the prisoner. I deny that there is any such rule of law. The rule is that the circumstances must be such as to exclude every other reasonable hypothesis.⁸

But, gentlemen, Mr. Bryan has told you—complaining of the rules of the law, the benefit of which he invokes every day in the courts of justice—that this matter of circumstantial evidence is one of the most cunning inventions ever devised of men to take away human life, and that it has destroyed more than all else beside war; and the sword, perhaps also pestilence and famine, must give place in destructive power to circumstantial evidence. But I wish to confront the gentleman's assertion with authority. I wish to show him and to show you that there is one other device, one other offspring of the human mind, one other engine, even of our courts of justice, that has taken away more lives (unjustly, I mean) at the bar of justice than this monstrous instrument of judicial murder. I read from the same authority:

“Nor can any argument against the validity and sufficiency of circumstantial evidence, as a means of arriving at moral certainty, be drawn from the consideration that it has occasionally led to erroneous convictions, which does not equally apply as an objection against the validity and sufficiency of moral evidence of every kind; and it is believed that a far greater number of mistaken sentences have taken place in consequence of false and mistaken direct and

⁸ Wills on Cir. Ev.

positive testimony, than from erroneous inferences drawn from circumstantial evidence."

"It is indispensable, however, under every system to the very existence of society, that the tribunal should act upon circumstantial evidence."

I think I have cleared away some of the difficulties with which the prisoner's counsel have sought to encumber the case. Let us now examine the testimony and see, in the first place, whether the prisoner had a motive. I have already remarked that in calling Lassiter an infamous wretch who had violated the prisoner's bed, counsel had themselves admitted and imputed a motive. So crooked and tortuous are the ways of guilt that even those who defend it seem inevitably to involve themselves in absurdities and contradictions. But apart from this, the evidence itself discloses a motive. Let us go back to the beginning.

In August the prisoner drove Lassiter from his house. A feud had sprung up between them. Whatever may have been its origin, I do not care, and it has nothing to do with the case. The prisoner told him if he did not leave, he would make a hole through him as big as his arm. He left. Just before August court, and a few days after this, the prisoner is in conversation with Swindell about Lassiter and closes with this significant declaration: "A man might make him kill him." What was he thinking of? What was in his heart and mind? August court comes and he gets out a peace warrant against Lassiter, stating at the time to Thomas Smith and Josiah Jarvis: "It is God's holy truth that that man and I can't live in the same neighborhood together." It is said by one of the prisoner's counsel that these conversations are suspicious and ought to be received with great allowance. I will give the gentleman the consequences of his own argument by and by. Shortly after August court, in the month of September, he goes to Pasquotauk, where he had an appointment to preach. He refuses there to perform his duties. He is dejected and troubled. The same passion is working in him and, as the witness Banks testified, Lassiter appears to be his trouble. "He would rather," he said, "be dead

than alive." A few days before the murder, in conversation with Tyson, who, I submit, has not been impeached, he said, in reply to Tyson's declaration that he had never seen Lassiter: "If you never have seen him, it is likely you never will." The next conversation is with Bartholomew Swindell. Although the counsel for the prisoner accuse him of perjury without even the shadow of evidence to sustain the charge, yet they do not deny the fact of the conversation at his boat on Rose Bay. This was during the week preceding the murder. After some remarks about his bears and his lake land, he said he wanted to get out of this infernal Lassiter scrape. And what was the next expression of this man who, they say, preached the gospel of the Son of God—who taught the requirements of God from man to man—who broke the bread of life—this holy man of a despised sect—what were his next words? "The infernal son of a bitch; he ought to be shot, and shooting is too good for him." What was he then thinking of, only three or four days before the murder? So far as appears, he never mentioned the name of Lassiter without loading him with invective. He had not only a motive, not only malice and ill-will, but he had planned and plotted the very means and instrument by which to accomplish his death. "He ought to be shot, and shooting would be too good for him."

We have thus, gentlemen of the jury, traced him down from before court in August, through the month of September, to the time of the commission of the murder. On that day, a few hours before the act was perpetrated, the deceased, unable to endure any longer the prisoner's slanderous imputations, caused to be served upon him a writ, claiming damages to the amount of \$2,000. Do you believe that when this writ was served it did not kindle up the fire of vengeance in his heart? He had been brooding over and nursing his malice for months. Had this last act of the deceased no effect on his mind? It is a most pregnant fact that this was on the very day of the murder.

Gentlemen, this indictment has been pending for twelve months; the murder was committed more than one year ago.

The prisoner has been able to employ four as distinguished counsel as money can command in this part of North Carolina, and they have done their whole duty. Yet, in all this time, with all this array of counsel, with all his means and with all his friends, he has not been able to procure evidence enough to raise the shadow of a suspicion that any other man on the face of the earth had a motive for compassing Lassiter's death. The prisoner at bar, then, had a motive. All he waited for was an opportunity, and an opportunity came. It came, as it always comes and always will come, to a determined will. It came, as it always comes, to a fixed and settled purpose. It came, as it always comes, to the persevering passions of hatred and revenge.

One of the prisoner's counsel frankly admitted it was not impossible for him to commit the crime; that is, to go through the woods in time to cut Lassiter off and kill him; but he took good care to retract the admission before he got through. But, before I take up the testimony of the witnesses on this part of the case, I wish to call your attention to one thing in regard to this map. There has been much talk of humbug. The counsel tell us the distance is two miles and an eighth from Carawan's through the woods to the two pines. How? By a surveyed line? No. But they cunningly and insidiously get a State's witness, while on the stand, to draw lines with large curves and then measure those lines. Why, they might, in this way, as easily have made the distance five miles as two. It is evident at a glance that the distance is less than by the road, for the road makes an angle. So much for the map.

Now, what is the testimony of the witnesses? Lassiter started in the morning from Mason's with the purpose of going to the lake to teach school. He has the day before him. He saunters along, and at dinner time reaches Thomas Bridgman's. He leaves Bridgman's after dinner, goes on to Brown's, stops to talk with him five or ten minutes, then on to Gibbs', where he stops twelve or fifteen minutes more. He has time to walk leisurely and time to stop and talk with everybody he meets. And he had no cause to make haste, as

he could easily reach the lake before night. The prisoner left his house in twenty or twenty-five minutes after Lassiter passed. Now, how long would it take to go through the open woods to the lake and cut Lassiter off? On this part of the case, Bridgman's testimony is good for nothing—honest though he may be—because he knows nothing about it. He has not been in the woods for three or four years and thinks a man would meet with many obstructions. Topping, Day and Swindell, who examined the woods in May last, all testify that the way is open and that the cow paths are running in every direction. Swindell thinks a man could go through at a rapid pace as soon as one could walk leisurely around the road, and Day says there are many open places where a man might run. George Jarvis—whom Mr. Bryan chooses to call a mink, but whom, though poor and in humble life, there is no reason to disbelieve, as they have not sought to impeach him, who is a hunter and woodsman and has been in those woods seven or eight times—says a man could go through from Carawan's to the two pines in three-quarters of an hour and to the school house in thirty minutes. Does he not know it?

Now, gentlemen, what was the time? Lassiter starts from Bridgman's, say, at three o'clock, saunters along, and three-quarters of an hour before sunset the gun is heard. Had not the prisoner ample time to get through those woods? What was there to prevent him? He was a strong, athletic man and knew every foot of that ground. His own life depended on his exertion to get through and return as soon as possible. What can not such a man do in circumstances like these, especially when impelled on, as the prisoner was, by the deadliest purpose of vengeance? What will not a man do and suffer in shipwreck while life and property depend on his exertions? Yet the prisoner's motives were stronger and more imperative; he was seeking, not only to gratify his revenge, but to save his own life. There is no limit to the endurance of a man in the pursuit of his foe.

On this part of the case, I wish to say a little more, because great stress is laid upon it by the defense. Mr. Rodman said

that time was very important, and quoted a case⁹ where the prisoner's life was saved by an accurate computation of time. But in that case, the prisoner, if guilty, must have travelled upwards of three miles and three-quarters, had criminal intercourse with the deceased and committed the murder in twenty-five minutes. In that case also, the witnesses compared their time pieces the day after the occurrence, and therefore testified, not from mere recollection, but with mathematical certainty. In this case, all the witnesses differ about the time, as they all speak merely from recollection. How could it be otherwise than that they should differ? Suppose a man should pass through a thickly settled neighborhood, or through one of the streets of this town, at three o'clock today, and every man should see him, how many would tomorrow agree as to the time he passed, speaking merely from recollection? It is mere guess and conjecture and can be nothing more or less. Hence, Sawyer, who thinks Lassiter passed Carawan's at two o'clock, is as likely to be right as Bridgman, who thinks it was three o'clock. But, gentlemen, although the witnesses differ as to the time—and it would be strange, indeed, if they did not differ, under the circumstances—still there can be no doubt that Lassiter dined at Bridgman's that day; that he passed the prisoner's house soon after on his way to the lake; that he stopped on the way at Brown's and Gibbs'; that he passed on towards the lake, that afterwards a gun was heard in that direction, and that Lassiter was shot on the right side and from that side of the road on which are the prisoner's house and the woods. Afterwards—and it is a most significant fact, gentlemen—the same kind of shot and the same mixture of shot were found in one barrel of the prisoner's gun which were found in the body of Lassiter. All these, gentlemen, are facts which do not depend upon the testimony of Carawan Sawyer, whom they have attempted to impeach, and I ask you if they do not, taken in connection with his subsequent conduct, satisfy you that George W. Carawan, the prisoner at the bar, committed the murder with which he is charged?

⁹ Rex v. Thornton.

I have thus, gentlemen of the jury, shown you that the prisoner had both the motive and the opportunity to commit the act. It remains to inquire how we connect him more immediately with the fact of the homicide. I come to the testimony of Carawan Sawyer. The prisoner's counsel tell you that this witness came here to swear away his uncle's life for a few dollars. He testifies that shortly after Lassiter passed, the prisoner went to the woods, his wife following after him with his gun concealed under her apron. She stopped at the woods and returned without the gun. The prisoner went into the woods and did not return till sundown, and then without the gun. That night prisoner sent witness to Bell's, and when he came back, some hours in the night, prisoner was not at home and, so far as he saw, his negro man was not there. Where he was gone no one knew but himself and God. The prisoner has not in any way attempted to account for his absence that night. Wednesday he took his hoe and went into the woods in the same direction he had taken on Monday. Saturday morning he sent witness to Moore's for him to come to his house, and on witness' return he told him that if he would swear prisoner was at home all day Monday, he would give him the best negro he had. That evening he ran away, telling witness as he was leaving: "They have found Lassiter, and if I stay here, I shall be hung." Is that statement true or not?

The witness, gentlemen, is a nephew of the prisoner and has been his apprentice for ten or twelve years. What motive had he to swear away his uncle's life? There is no evidence of his having been drilled, no evidence that he has been under the tuition and control of the prisoner's enemies, as his counsel charge. Do they say that Ira Topping, with whom he has lived since last April, has suborned him? They dare not charge it. Can they put their finger on any man, can they name the man to whom they dare impute so horrible a crime? No, gentlemen, they can not. How, then, do they impeach him? By calling witnesses as to his general character? No, that they knew they would fail in. But, by attempting to show that his statements, made in various conversations, do

not exactly agree with each other and with his statements here. One of the prisoner's counsel told you that those conversations were suspicious, and in his opening speech that if any man proved a good character for Sawyer, you ought to suspect him. This is a most insidious way of attempting to impeach a witness—by asking him if he did not have such a conversation with such a man at such a time and place. If he answers that he does not recollect it, Mr. Bryan proves it on him and counts that a perjury; and this infamous wretch, this Judas Iscariot, has defiled his hands and damned his soul with the price of blood! Am I talking to men or to boys who can be led away by denunciations like these? But see what they all amount to. The witness tells a tale probable on its face, and without hesitation. There is nothing in his appearance or in the character of his testimony to excite suspicion. He was one of the most important witnesses, and everybody in Hyde and the prisoner's counsel knew it. Yet, notwithstanding the prisoner had his friends and spies to entrap him and get declarations from him which would make against him; notwithstanding he must have had hundreds of conversations on the subject, all they have been able to prove is slight variations in conversations with four witnesses only. These were not under oath, but come from the mouths of witnesses of fallible memories, and one of them (Mr. Moore) says his memory is very treacherous of late.

Moore tells you that he read to the witness the first part of the prisoner's note to himself and asked him if it was true that the prisoner was at home all day Monday, Tuesday and Wednesday, and the witness said it was. The witness does not recollect it and, according to Mr. Bryan, this is one perjury, and the jury is bound to disbelieve the witness. I ask if it is likely that the boy was in the habit of contradicting his master. He was under prisoner's direction and control and knew it would not do to deny what he had stated. In the second conversation with Moore, which was just after the prisoner had fled, he began to correct his first statement. He does not now recollect this and, according to Mr. Bryan, this is another perjury. In the third conversation, he wishes to set

himself right, but Moore reprimands him severely and prevents it. He becomes freer and freer every day, and when he is disentrallled from the influence of the prisoner, he tells the whole truth. Bridgman, the next-door neighbor, and Topping, his friend, with whom he communicated freely, confirm his whole statement, except in a few particulars. The testimony of Israel Brooks is of no sort of importance, as he casually heard only a part of a conversation under circumstances when it was natural that the witness should evade inquiry and, what is very remarkable, although Brooks pretends to quote the very words of the witness, he has a most astonishing oblivion of the names of the persons who were present at the time. As to the statement before the Coroner's inquest, the witness sufficiently explains that. And yet, according to the prisoner's counsel, these discrepancies are so many rank and rotten perjuries. Why, gentlemen, counsel could string together a hundred perjuries against any man. I could in this way convict of perjury even the minister of the gospel who sits here before me.¹⁰ We find variations in the statements of the best of men, and it is impossible, in a long narrative often repeated, to observe a precise uniformity of statement.

And now, gentlemen, how do we support this witness? Why, out of the mouths of their own witnesses, called expressly to impeach him. Topping and Thomas Bridgman, who know him best, both swear that he has a good character and is worthy of belief. Bridgman says he will tell the truth, but, "if bothered, he might make mistakes." And, gentlemen, was he not "bothered?" No witness was ever subjected to a more rigid cross-examination than he. No members of the bar ever saw a more studied or persevering attempt to entrap and confuse a witness. Yet out of all the smoke and flame through which he had to pass he came brighter than before, and all the denunciations and anathemas of counsel can not affect him.

And how else do we support him? The prisoner, while in

¹⁰ Rev. Mr. Geer was sitting in the bar.

Hyde jail, made application to his nephew, Green Bridgman, to get the boy to go away. On being told by Bridgman that he was his bondsman, the prisoner asked if the witness could be got to leave if the bond was paid. What does this mean? They say he wanted to get the boy away from the prisoner's enemies, but there is no evidence that he was with his enemies. What, then, does it mean, except that the prisoner was conscious that the boy knew enough to convict him of the crime with which he had stained his hands, and he wanted to suppress his testimony? What else is there, gentlemen? Look, gentlemen, on these letters written by the prisoner immediately after he was put in Hyde jail. Mr. Bryan has read them to you very pathetically and has told you that there is not much in them after all—that they show a mind crazed and distracted by physical suffering. But if the prisoner at the bar was crazy when he wrote those letters, there was most remarkable “method in his madness.” What is the construction to be put upon those letters, and what was their object? To get rid of this witness, and nothing else. How do they read?

“You said you had boys that would do thus and thus.”—Do what?

“If he will not leave, do otherwise. For God's sake let it be done before court in February.” Let what be done? “If he will not leave by persuasion, he must be got rid of otherwise.”

“You do not live in the neighborhood, therefore you will not be suspected.” “Tell Reuben, etc., to try and get that foolish boy to leave, and, do you, my friend, go with him, and see that he is gone.” “I then should not be so crazy.” Was it confinement that made him crazy? No, gentlemen. If the witness was gone, “I then should not be so crazy.” It was a knowledge that Carawan Sawyer knew he was guilty of the crime, which made him crazy.

“If you try among the people there can be over \$1,000 made up directly.” Made up for what? Why, to get the witness out of the way.

“Five hundred dollars will hire him to leave, no doubt of it. I have directed Mary to pay \$500. Make up \$1,000 if needed, for God's sake!

“Tell her (Mary) to be careful for they are going to have her sworn. Caution her to be on the watch, and not to talk to any on the subject and not to suffer them to question her, and if they try, let her answer to this. Let that be done on the trial and stop right there.” He knew that his wife also knew enough to convict him,

but did not know that the law would permit her to give testimony against him.

"Be sure and do the main thing, to put aside that evidence by hook and crook." That was the main thing—that was the purpose of writing these letters—to get rid of the witness by fair means if he could, but, at any rate, by means either fair or foul. He must be got rid of "by hook or by crook."

We introduce these letters, gentlemen, not simply to support the testimony of Carawan Sawyer, but as a distinct and substantial fact which goes to prove the guilt of the prisoner. The suppression of important testimony is always indicative of guilt. They have talked about bribery. They have told you that this witness, who could get \$500 or \$1,000 from the prisoner at the bar for leaving the county, yet, so prone is he to perjury, so deep is his malice, that at the instigation of his enemies, he came here to swear away the prisoner's life for the paltry pittance of ten dollars! My God! Am I talking to men? Gentlemen, if there were any testimony to impeach the boy, Sawyer, these letters support him with more strength and more emphasis than if the whole county of Hyde were here as one man to testify that he is worthy of belief. If the boy was perjured, if false in his statements heretofore and false now, if he did not know the facts to which he deposes, the prisoner knew, if innocent, that the mystery which attended the murder of Lassiter would be cleared up and that perjury could not stand between him and justice. No, gentlemen, he knew he was guilty of that murder; he knew the boy, Sawyer, knew it; hence, his anxiety to get rid of him by hook or by crook.

Let us now inquire, gentlemen, what was the conduct of the prisoner during the week succeeding the fatal Monday? On that day he got back to his house as soon as possible in order to be able to account for himself. He stays at home all day Tuesday for the same purpose. Between Monday and Tuesday he had changed his dress. The witness (Swindell) who testifies to this is called another perjured witness because he could not recollect what dress any other man had on whom he saw that day. It is not strange that he should remember the fact when it is known that in less than a week afterward

Lassiter was ascertained to have been killed on Monday and the prisoner had run away. See on what foundation they accuse witnesses of perjury! Wednesday he goes into the woods carrying a hoe in the same direction he took on Monday and was gone several hours. Mark you, gentlemen, Lassiter was murdered on Monday and buried on Wednesday. Thus, much of the prisoner's work was performed. Thursday he goes down to the lake to account for Lassiter—asks Day if he had heard anything of Lassiter that week and tells him that his folks had seen Lassiter pass his house on Monday with his clothes bag full of clothes and, says the prisoner, "I am thinking he has cut off." "Oh, no," says Day; "I reckon he is down on the lake at Topping's or McGowan's." "No," answers the prisoner, "I am thinking he has cut out." Bear in mind, gentlemen, that this is the first time it was intimated by any one that Lassiter was missing. The people on Rose Bay supposed he was at the lake, and the people at the lake supposed he was still at the Bay. What was, then, the prisoner's purpose? To suggest to the public mind, through his friend, Day, what the public mind had not suggested to itself, namely, that Lassiter had run away. He did not want any inquiry or search for him in Hyde County. Now, gentlemen, take this conversation with Day in connection with the conversation with Simmons. Two of the prisoner's counsel did not think proper to notice it, and the other passed over it with most commendable haste. Simmons was a reluctant witness for the State. He saw the prisoner on Friday night and told him the news that Lassiter was missing. The prisoner replied: "It is strange news to me." On Tuesday he tells Day that Lassiter had cut out, and on Friday he tells Simmons he knew nothing about it—"it was strange news to him." How, gentlemen, are these contradictory falsehoods to be accounted for? On Saturday the prisoner asked Simmons what the people thought of it. Witness replied that the people thought Lassiter was destroyed. The prisoner then asked: "Who do you think they will accuse of it?" Witness answered: "From all I can gather, I think they will accuse you of it." What does the prisoner say when informed of a charge of that char-

acter? Not one word! Is this the conduct of an innocent man, to manifest no surprise, to make no protestations of innocence, when told that he was charged with murder? He did not seek any explanation, but passed it over without a syllable in reply. Gentlemen, it demands explanation. Let his counsel give it if they can, or any hypothesis consistent with his innocence.

On Saturday also he states to Moore that he expected to be accused of the murder, but that he was at home all day Monday, Tuesday and Wednesday. If he was an innocent man, if he was wrongfully accused, why did he feel the necessity of accounting for himself on those days? Why, unless those were the very days he had employed in committing the crime and concealing all traces of it? None but he knew with certainty that Lassiter had been murdered on Monday; none but he knew that the work of burying the body was consummated on Wednesday. Is not such conduct consistent, and consistent only with a guilty knowledge of the crime? There is no room for doubt. But if there was, it must be entirely removed by what took place in the evening of that day. Moore goes to his house and carries him the intelligence, which he had heard on his way, that the body had been discovered. The prisoner immediately flies, passes out of Hyde, through Beaufort County, God knows where, attempting, as he leaves, to bribe the witness Sawyer to swear to the very statement he had made to Moore. And when two months after he returned, he returned secretly in the night and with no purpose of seeking an investigation or surrendering himself to justice.

Let us consider the time and manner of his flight. He stays at home on the night of the fatal Monday and is safe. On Tuesday he remains at home and is safe. Wednesday, Thursday and Friday he remains at home and is secure, believing that the precautions he had used had concealed the body of his victim from mortal sight and precluded all chance of discovery. He knew too well that, however strongly suspicion might fasten on him, however many might believe that Lassiter had fallen by his hand, the possibility that the deceased had left the county without being heard of would protect him,

and that he could not be convicted of murder until the body was found. It is a humane rule of the law not to convict for homicide unless the body is found, or at least most satisfactorily accounted for. But on Saturday he hears that the body is found, and he instantly resolves on a secret flight. Ah! gentlemen, he felt he was safe no longer. Why? Why was it that he fled then but that he saw the mangled and bleeding body of his victim, and even his very garments stained and stiff with his heart's blood, rising up before his sight to testify against him?

The discovery of the body added the last fatal link to the chain of circumstances which surrounded him. There was no chance of escape but flight, and his flight was a confession of the murder. It was a choice between the felon's reward and the miserable life he might prolong if he escaped. On Friday and Saturday, during the progress of the search, he was uneasy and restless, but up to the time of finding the body he had preserved his usual appearance as far as a guilty man is able. His strong, thick-set muscular frame, his firm and steady nerve and his evident power of will enable him partially to control and conceal his emotions. But that fact unmans him and, in the language of the witness, he becomes "as white as ashes" and exclaims, "I must go away or I shall be hung." He becomes a coward and flies from justice. Nothing could have wrought such a change but the consciousness that his guilt was now apparent to the world.

It seems, gentlemen, that the conduct of the guilty man is always certain to bear witness against him. He feels that there is blood on his hands which nothing will wash out; the fatal instrument is present to his sight; the consciousness of guilt is ever with him, and he can not act as if he knew and felt it not. It is true—God, in His Providence, in the creation of man, in endowing him with a moral sense, has made it true—that

Murder, though it hath no tongue
Yet speaks with most miraculous organ.

I have thus, gentlemen of the jury, reviewed the testimony in this case, and I think you can hardly fail to be satisfied

beyond all reasonable doubt of the prisoner's guilt. If you are thus satisfied, your duty is plain. I know that the prisoner's counsel have appealed to you with all their energy and eloquence to remember his grey hairs, to respect the short remnant of his days, to regard his wife and children and to show mercy. If, gentlemen, it were your province to be merciful, I ask: Is the prisoner deserving of mercy? What mercy was in his heart, what sentiment of compassion was there, when on the public highway he coolly and deliberately took the life of his fellow-man?

That mercy I to others show,
That mercy show to me.

is all he can ask at the hands of this jury, who are now to try him, or at the hands of that God who shall try him hereafter.

Gentlemen, those connected with the prisoner at the bar deserve the sympathy of us all. But has it come to this, that, in a court of justice, your sympathies are to be invoked in behalf of crime? Has it come to this, that you must forget that you are ministers of the law; that you must disregard your oaths and let guilt go unpunished because you have sympathy with the guilty? Recollect, gentlemen, that sympathy is mistaken and false when it cajoles us into a neglect of duty; that it is unjust to itself when it countenances crime; that it is dangerous and criminal when it seals up the fountains of justice and thwarts the administration of the law. There is no room for sympathy. But if justice permits it; if it is required by right reason; if it is required by any imperative law of our being, let it be directed in the proper channel. Let it be in behalf of the dead, who was untimely cut off. Let it be in behalf of him who was butchered cruelly and without remorse. There is perhaps within the limits of this State, and within a day's journey of us, a bereaved family who mourn a son and brother, fallen, not by the hand of disease, not on the bed of sickness soothed by the consolation of friends, but by the hand of violence, sent before his time, and perhaps unprepared, into the presence of his God. Let your sympathies be for them, and not for him who has desolated

their house and made them to sorrow all their days. Let them not be for him whose hand is red with the blood of his fellow-man, whose heart is black with the deepest dye of human guilt.

Gentlemen, this is a case of no usual interest. Excitement has died away, but it has left in the public mind much of anxiety and apprehension. Men wish to know whether justice is to be meted out in its appointed tribunals. They wish to know whether the law is to be triumphant—whether it is to be administered in such a manner as to afford, as it was designed to afford, protection to human life. They wish to know whether the violation of the law is to meet its reward or whether the criminal is to be allowed to gorge himself with blood and yet, through the instrumentality of a jury of his countrymen, go “unwhipped of justice.” I ask no verdict at your hands unless it comes from a well-settled conviction of the prisoner’s guilt. But if you are satisfied beyond a reasonable doubt—of that each one of you is to consider for himself on his own oath and conscience, for the case of *State v. Ephriam* has no application here—then I do ask it in the name of the law and of justice. I ask it in the name of all who have lives to be protected or interests to be advanced by the support and enforcement of the laws.

Gentlemen, it is said that a sense of duty performed or of duty neglected and disregarded follows us everywhere and always; that we can not escape from it without escaping from ourselves. Your action in this case, therefore, is important to yourselves. . The events of this trial and your own final verdict in the case will be with you in memory both here and hereafter as a source of gratification and joy or of misery and sorrow, according as you shall have performed your duty. I trust you will so perform it as to satisfy both your own consciences and the claims of public justice.

THE CHARGE TO THE JURY.

JUDGE BAILEY. You have been patiently engaged six days in the trial of this case. You have heard the evidence for the State and for the prisoner and the arguments of counsel,

and it now becomes my duty to call your attention to the points of law raised on both sides and to give you in charge the law bearing on the case and the application of it. There are two plain principles of law, with which you are probably familiar. The first is that where a homicide has been committed and nothing to the contrary appears, it is presumed to have been done with malice. The other is that he who is charged with the commission of crime is presumed to be innocent until the contrary appears. It may be proper to mention here that, though there be excitement out of doors and in the court room attending the trial of this cause, yet you and I are not to be affected by its influence and must try the prisoner at the bar as if we had never heard of the offense nor of his case before. If you have learned anything other than what you have learned upon the trial, the Court charges you that you must banish it from your minds. In this case, as in all others, you must be governed by the law and the testimony.

Murder, gentlemen of the jury, is the highest offense which one man can commit on the person of another. It is the taking away the life of a fellow being with malice aforethought, and it forfeits the life of the criminal. It is not pretended on either side that the crime charged to have been committed by the prisoner is less than murder. It must be murder or it can be nothing. You have been told that this is a case resting, not upon positive, but on circumstantial testimony. When that is the case, it is always necessary for the prosecuting officer to form a certain theory or hypothesis, and he must introduce testimony to prove that hypothesis to be true. Not that the facts can be proved by an eye-witness, but that circumstances must be shown from which the facts can be deduced.

I shall not, at this late hour, gentlemen of the jury, attempt to sum up the mass of the testimony. Twenty-five or thirty witnesses have been examined on the part of the State and two or three by the prisoner. You have heard the testimony fully commented on by both sides.

The State insists, gentlemen of the jury, that the supposi-

tion or hypothesis made by the Solicitor in his opening argument has been sustained by the proofs. Are you satisfied of this? Does the proof correspond with and sustain the hypothesis? This is the grand inquiry to be left to your consideration.

As this is a case resting upon circumstantial testimony, it is but right that I should make some explanation of the terms "circumstantial" and "direct." When a thing is proved by the evidence of one who knew the fact deposed to, the evidence is said to be direct, because it bears directly upon the subject of inquiry. But when there is no direct proof of the subject in dispute, but so many circumstances pointing in that direction are connected together that we are forced to draw the conclusion that a given proposition is true, then the evidence is said to be circumstantial. In other words, if a witness be called who is faithworthy and he testifies that he saw a fact, his evidence is direct. If, however, he says that he did not see it, but details a series of circumstances leading to the formation of a certain hypothesis as to its truth so forcible as to exclude every other reasonable hypothesis, then this evidence is circumstantial. This is the difference between the two. In one respect, there is no difference, for both lead to the same conclusion. If circumstances produce convictions so as not to leave a reasonable doubt as to the truth of the hypothesis, then we are under the same obligation to believe it as if sworn to by an eye-witness.

But there are certain rules which ought to govern us in drawing conclusions resting on circumstantial evidence. There are four rules to which the Court requires you to pay special attention: First, the circumstances must be fully established. Second, all the facts must be consistent with the hypothesis. Third, the circumstances must be of a conclusive nature and tendency. Fourth, they must, to a moral certainty, exclude every other hypothesis but the one proposed. Not that they must exclude every other possible hypothesis, as contended by the gentleman who last addressed you on behalf of the prisoner, but the circumstances must be of such a conclusive nature that you can not form any other reasonable one. If

the prisoner can show a reasonable hypothesis, consistent with the facts and his innocence, then there is no necessity to detain you further. But if you are satisfied by the testimony in the cause that the deceased was murdered by the prisoner, the Court charges you that it is your duty to find him guilty of the crime of murder; and it is totally immaterial whether he was prompted by malice or revenge. The prisoner's complaint of wrong can neither excuse nor palliate the crime. For, if the deceased was going along the road and the prisoner got ahead of him and shot him, it is totally immaterial what had occurred between the parties at the prisoner's house. He is guilty of murder unless the contrary can be shown by the prisoner. If, when you retire and weigh the circumstances, you should have no reasonable doubt of the prisoner's guilt, you ought not to hesitate to perform your duty. There are rights belonging to the State in which you live, as well as to the prisoner, and you ought not to hesitate, if satisfied of his guilt, to convict him.

But the defendant says on his arraignment that he is not guilty. And if his guilt has not been made out here, he is not guilty. For that which does not appear does not exist.

In the first place, it is insisted in behalf of the prisoner that if all the testimony adduced on the part of the State be true, you can not convict him, for, according to the testimony, a part of the hypothesis could not have been accomplished. That at all events, it is not probable that the prisoner could have gone through the woods with a gun, murdered his victim, disposed of his body and returned within the time deposed to. And that of two periods of time spoken of, if one be favorable and the other unfavorable to the prisoner, the Court must charge you which period to select, and that you are in law bound to adopt as true that time which makes for the prisoner, and not that which makes against him. That if you consider the time as deposed to and be governed by this rule, it is utterly impossible, or at most highly improbable, that the prisoner could in this time have gone from home, committed the act and returned. Now, gentlemen of the jury, it is true that if you should be called to

decide between two fixed periods of time, one of which is important, then the rule must be to adopt not only the most charitable, but the most reasonable construction. If the question of time is nicely suspended in a balance so that the jury can not tell to which side the weight of evidence preponderates, then they must adopt that period which is most favorable to the prisoner, and not that which is against him. But if the jury should be satisfied as to the time, this rule will not apply. Secondly, that if the jury should be satisfied that the prisoner could have done the deed within the time deposed to and returned to his house at a half hour by sun, then the defendant says the prosecution must fail, because it is propped up and sustained by the witness Carawan Sawyer, who is called the main witness, and who is unworthy of belief. That, although, in part of his testimony, he had told the truth, he is not to be credited if in other parts of his testimony he has told falsehoods and told them here on the stand. The prisoner's counsel claims that they have a right to have the testimony of this witness set aside by a stubborn rule of law that if the witness is false in one particular, he is false in all; that this is the rule, and the jury has no right to discriminate between what is true and what is false. It is insisted here that the witness has committed perjury on the stand. If this be so, gentlemen of the jury, you must discard the whole of his testimony from your minds.

Another principle of law has been raised by the prisoner's counsel and is not denied on the other side. It is that "circumstantial testimony must not be inferior to that derived from the testimony of one creditable witness."

You will not convict, gentlemen of the jury, on the testimony of a single tainted witness. If the matter goes only to his discredit, to his bad character, if his statements out of doors differ from his statements on the stand, the jury will consider the testimony and give it that weight which it deserves. But, if on the stand in questions pertinent to the issue, he should deny a particular thing or say that he did not remember when he did remember and the denial is corrupt, then

the witness is guilty of perjury, and the rule is that you must set the whole aside.

Gentlemen of the jury, the cause is submitted to you. Retire to your room and make up your verdict. If you are satisfied beyond a reasonable doubt that the prisoner at the bar is guilty of the crime charged against him, you must find him guilty; if not satisfied of his guilt beyond a reasonable doubt, you must find him not guilty.¹¹

THE VERDICT.

November 30.

At 8:30 a. m. the *Jury* entered the courtroom and took their seats in the jury box. JUDGE BAILEY shortly after took his seat on the bench and ordered the prisoner to be brought into court. The prisoner was brought in, in custody of the jailer and deputy sheriff, accompanied by his wife and three children. His Honor instructed the clerk to call the jurors by name and ask them if they had agreed upon a verdict. They all answered to their names and replied that they had agreed.

The Clerk. Who shall say for you? Benjamin Patrick, the foreman.

The Clerk. George Washington Carawan, hold up your right hand. The prisoner rose, and looked calmly upon the foreman of the jury.

The Clerk. Look upon the prisoner, you that have been sworn; what say you—is he guilty of the felony whereof he stands indicted or not guilty?

Mr. Patrick (the foreman). *Guilty.*

The Prisoner took his seat without moving a muscle, and bending over whispered to *Mr. Satterthwaite*.

Mr. Bryan complained to the Court that the verdict had been taken before all the prisoner's counsel had arrived, and asked that the jury be polled.

The JUDGE said that *Mr. Satterthwaite* had been in attendance and that the verdict had been rendered.

Mr. Bryan insisted that it was a right which the prisoner was entitled to, as the verdict had not been recorded.

The JUDGE ordered the jury to be polled.

The Clerk called each juror by name, and asked him, "Guilty or Not Guilty?" The prisoner fixed his gaze intently on each juror as he responded to the question, "Guilty."

The Clerk. Gentlemen of the jury, hearken to your verdict, as the Court has recorded it. You say that George Washington Cara-

¹¹ The JUDGE first charged the Jury that they must reject entirely the testimony of Sawyer. He called them back after they had retired to correct this.

wan is guilty of the felony and murder whereof he stands indicted. So say you all.

The JUDGE. Gentlemen of the jury you are discharged.

While the Clerk was reading the verdict of the jury the prisoner, who still looked calm, was observed with great deliberation, to unbutton his vest and open his shirt bosom, but his countenance betraying no evil purpose, the movement excited no suspicion.

The JUDGE. The court will take a recess of an hour.

As the Judge announced the recess the prisoner drew a single-barreled, self-cocking pistol, rose from his seat in a half-standing posture, leaned forward, thrusting his arm between the heads of Messrs. Bryan and Satterthwaite, took deliberate aim at Mr. Warren (who, with Mr. Solicitor Stevenson, was standing six feet in front of him), and fired. The ball struck just above the heart, and passing through the lapel of his coat and cutting the cloth on the breast struck the padding, and fell to the floor.

The prisoner dropped this pistol and instantly taking another applied it to his temple. Mr. Hinton, deputy sheriff, seized his arm, and pulled it down to the railing of the box, but could get it no further. During this struggle the prisoner, with great coolness, leaned his head against the muzzle of the pistol and fired, the ball entering the right side of the skull considerably behind and somewhat above the ear, and traversing the brain until it lodged just over the left eye. The prisoner dropped on his seat, his head fallen upon his bosom, bleeding profusely. He died in a few minutes.

THE PRISONER'S LAST NIGHT.

After the Judge had concluded his first charge to the jury, the prisoner was highly elated with the idea of a speedy acquittal. On being remanded to jail, he told his wife that the jury would acquit him, and he intended to go to Hyde County the next morning in the steamboat. She told him that he was not prepared to go, but that she would go home and get him some clean shirts to take with him.

After the Judge had charged the jury a second time as to the weight due the testimony of Carawan Sawyer, the principal witness, the prisoner was greatly dejected. He declared from that moment that the jury would convict him, and acted according to this belief up to the moment of his death. On being taken from the dungeon to the room above to be locked up for the night, he told his wife and children that he wished them to stay with him. Said he, "I shall be condemned tomorrow and then they will fasten me up in this place and you will never be permitted to see me again until I am taken out to be hung." On first entering the dungeon, while the jailor was present, he remarked that it was not worth while for him to take off his clothes, as he could not sleep. He did take off his coat, however, and hung it on the bedstead. After the jailor left and the children had been put to bed, he undressed and lay down for awhile, then rose again, saying he could not sleep. He sat up and walked the

floor nearly all night, conversing with his wife and giving her directions about the management of his affairs. In the morning, he was taken from the dungeon, and conducted again to the room in the story above. While there, he calmly shaved himself and ate a hearty breakfast. He manifested great concern to know what the verdict would be, and went several times to the grates of his window, to inquire from passers in the street. At one time he called a gentleman, a citizen of Washington, with whom he was well acquainted, and requested him to go to the hotel where the jury had slept and inquire what the verdict was, and then come and let him know. This gentleman did not return, and this gave him great uneasiness. Before leaving the jail, he wrote something on a slip of paper (which has never been found), and delivering the inkstand and his spectacles to his wife, told her to put them away and be careful not to spill the ink. When she turned from him to put away these things, he had the slip of paper folded between his fingers. It has never been seen since. On leaving the prison to hear the verdict, he said good-bye to the negroes and other prisoners, saying that they would never see him again. He shook the jailer's wife by the hand and bade her farewell; and when he entered the street he was in tears. These were soon dried, and he entered the court room calm and undaunted.

THE CONFESSION OF CARAWAN'S NEGRO SERVANT.

Carawan had a favorite slave named Seth, in whom he placed great confidence. This boy assisted his master in burying the body of Lassiter. But by the laws of North Carolina, as of all the slaveholding States, a negro could not be a witness against a white man. After the death of Carawan the negro's confession was published and is as follows:

On Monday night, just before dark (the day Lassiter was murdered), while Seth was feeding the horses in the stable, his master came to him and told him he wanted him to take an oath to keep a secret that he was going to tell him, and made him take the oath. He told him that he had killed Lassiter, and that he must go and help him bury the body; to get a pair of leading lines (such as he used to guide the horses in ploughing), and go with him down on the turnpike. The boy got the lines; but, as they were about to start, he asked his master if he was going to leave Carawan Sawyer, and a free negro boy, who was then living with Carawan at home whilst they were gone? Carawan answered that he was not; and then went to the house and sent Sawyer and the free boy to Bell's, as stated during the trial. When they got to the Yankee field, Carawan took a strong rail from a fence, and when they got to the two pines, Carawan led the way a few yards into the bushes, and there lay the body of Lassiter. The coat had been taken from the body and doubled up under it. Carawan said he had done this to keep the blood from running on the ground. He told the negro that he had concealed himself close to the two pines, and just as Lassiter had passed, he rose up to shoot him. In taking aim he stepped on a

dead bush, which broke down under his foot. The noise attracting Lassiter's attention, he turned partly round and saw him. He cried out, "O God!" and fell. He rose straight up again, but fell instantly. Carawan sprang into the road, seized the body and threw it into the bushes, and then with his hand scraped up the blood in the road, and casting it into the ditch, threw some pieces of juniper wood upon it. He then went to the body and dragged it farther off from the road, took off the coat, doubled it up and laid the body upon it, so that the coat was directly under the wounds.

The first thing Carawan and the negro did was to put the coat on the body. They tied him to the rail and first attempted to take him through the woods direct from the pines to the spot back of the Yankee field selected by Carawan for the burying place. In the darkness they found it impracticable to go through that way. They accordingly took the body up the turnpike to the east end of the Yankee field, and then carried it into the woods. They had much difficulty and fell with the body several times. On such occasions Carawan would fly into a passion, and kick both the negro and the body, sometimes stamping the latter. When they reached the spot where Carawan had previously fixed upon, they laid the body down, untied it, and prepared to bury it. Carawan first cut the turf with a knife, took it off and laid it aside, the negro helping as he was wanted. They then commenced digging the grave with sticks, taking the dirt out with their hands and putting it into their hats and then throwing it into the woods. They did this in order to leave no dirt above the grave. Finding this process difficult and tedious, Carawan ordered the negro to go to the house and get a hoe. He said he was afraid to go. Carawan insisted, and the negro started, concluding in his own mind to go to the neighbors and betray him. But before he had gone fifty yards Carawan called him back. They then put the body as well as they could into the hole they had partially dug, and covering it over temporarily with the turf, left it and went home, taking the rail and line with them. On Wednesday, which was a rainy day, Carawan went out alone with a hoe, and completed the work of burial.

The negro said that as soon as the body of Lassiter was found, Carawan came into the woods, where he and Sawyer were cutting wood, and told them that Lassiter was found, and he was going away, as he would be hung if he stayed there—that he should send for his family, and wanted Sawyer to come with them. He then took the negro with him to the turnpike and told him to go up on the road, and see if anybody was in sight either way. On his reporting there was no one, Carawan crossed the canal, and the negro saw no more of him, till he came back from Tennessee. He was constantly on the lookout for his return. He was afraid if Carawan came back and caught him he would kill him. He saw some one cross the yard and go into the house, and as soon as he became satisfied it was Carawan he ran with all his might to one of the neighbors and told him his master had come back.

THE TRIAL OF STEPHEN MERRILL CLARK FOR ARSON, SALEM, MASSACHUSETTS, 1821.

THE NARRATIVE.

In the town of Newburyport, Massachusetts, in the summer of 1820 there had been a series of incendiary fires, so that when between two and three o'clock on the morning of August 19, while the ruins of a building, set afire the night before, were still smoking, the inhabitants were alarmed by the renewal of the fearful outcry, which had so often broken the silence and slumbers of midnight, it recalled them to all the horrors of that remorseless element, to which their habitations and property seemed to have been doomed a prey. The fire began in a stable, then spread to a dwelling in which a whole family were asleep and with great difficulty escaped with their lives. There were destroyed in a few hours, three dwelling houses and six other valuable buildings, with most of their contents, and a number of persons were put in imminent hazard of perishing in the flames.

A boy only sixteen years of age named Stephen Clark¹ was

¹ STEPHEN MERRELL CLARK, a younger son of Moses Clark, of Newburyport, was born in that town August 20, 1804. At an early age he betrayed a stubborn and refractory spirit, often too turbulent for control. As he advanced in years it became more and more visible that mischief was his element, and falsehood and profanity became so habitual to him that a lie, or an oath were usually on his tongue, and the most vulgar insolence and abuse to his superiors were his characteristic traits. At the age of 14, he was brought before a magistrate for an assault and battery committed upon an old man. In petty thefts he was frequently detected, and was also suspected of much more heinous depredations, as he often showed sums of money to an amount far beyond any honest means of obtaining them, which he was known to possess. At the age of 13 he was placed in the service of his brother to learn the trade of a baker; but was shortly sent away on account of his bad conduct. He was then apprenticed to learn the trade of a cooper; but after three weeks' gross misconduct and several thefts from his master, he absconded. From this time for several years he loitered about the streets without

suspected, mainly because of his bad reputation and the fact that he was an associate of a profligate female of the town, but after an examination, his father having sworn that he was at home in bed with him at the time, he was discharged from custody. To get him away from his associations he was sent to Maine to look for employment. But he did not get any; he came back very soon and was again lodged in jail. Within the same walls was confined the wanton Hannah Downes, to whom he smuggled a note telling her that he had started the fires. She immediately informed the authorities and told them also that he had confessed his crime to her the day after, and before he was arrested the first time.

He was tried for arson before three of the Supreme Court Judges at Salem in October, 1821. It was proved that he had admitted his guilt not only to Hannah Downes but to several others who had visited him while in jail. And it was shown that on his examination before the magistrate while he at first denied his guilt, yet upon being apprised of the woman's testimony he voluntarily and fully confessed, after he had been told that the punishment of the crime was death; that he was not bound to criminate himself and that whatever he said would be given in evidence against him at the trial. His counsel tried to establish an *alibi*, but it was rejected by the jury; he was found guilty and a month later was hanged.

Before his execution he made a written confession in which he charged that Hannah Downes persuaded him to set the fires; that he had no other accomplice and that what he did was done on her account.

employment or restraint; and spent his time in vile company and wanton mischief, insulting all who rebuked him for his conduct with the most hardy insolence. Thus abandoned to vice and profligacy, his unfortunate father, who had been unable to reclaim or restrain him, fearing that he was "fatally bent on mischief," applied to the selectmen, a few days before the fire, which brought him to the scaffold, to confine him; and upon their declining to interfere, he was compelled to make a formal complaint before a magistrate, and took out a warrant to arrest him; but upon a show of penitence and promise of amendment, he directed the officer not to serve the warrant at that time; and it was reserved *in terrorem*. "Account of Life of Stephen M. Clark." *Post*, p. 599.

THE TRIAL.²

*In the Supreme Judicial Court of Massachusetts, Salem,
October, 1821.*

HON. ISAAC PARKER,³ *Chief Justice.*

HON. GEORGE THACHER, ⁴	} <i>Justices.</i>
HON. SAMUEL PUTNAM, ⁵	
HON. SAMUEL S. WILDE, ⁶	

.February 14.

Stephen Merrill Clark, a minor, aged sixteen, was set at the bar under an indictment charging him with having at the town of Newburyport, Massachusetts, set on fire a stable, and that thereby "the dwelling house of Andrew Frothingham, Esq., also there situate was then and there in the night time," on August 19, 1820, burned and consumed. He pleaded *Not Guilty*.

*David Davis,*⁷ Solicitor General for the Commonwealth; *John G. King,*⁸ *John Pickering*⁹ and *Leverett Saltonstall,*¹⁰ for the prisoner.¹¹

² *Bibliography.* *"Report of the Evidence, Arguments of Counsel, Charge and sentence at the Trial of Stephen Merrill Clark, for Arson, Before the Supreme Judicial Court, February 15, 16 and 17, 1821. Salem. Published by T. C. Cushing and W. Palfray, Jun., 1821."

*"Account of the Short Life and Ignominious Death of Stephen Merrill Clark, Who Was Executed at Salem on Thursday the Tenth Day of May, 1821, at the Early Age of 16 Years and 9 Months, for the Crime of Arson. Salem. Published by T. C. Cushing, 1821."

³ See 1 Am. St. Tr. 108.

⁴ THACHER, GEORGE. (1754-1824.) Born Yarmouth, Me. Delegate from Massachusetts to Continental Congress, 1787. Representative from Massachusetts 1st to 6th United States Congress. District Judge Maine, 1792-1800. Justice Supreme Court of Massachusetts, 1801-1824. Died in Beddeford, Me.

⁵ See 1 Am. St. Tr. 108.

⁶ See 4 Am. St. Tr. 99.

⁷ See 3 Am. St. Tr. 551.

⁸ See *post*, p. 612.

⁹ PICKERING, JOHN. (1777-1846.) Born Salem, Mass. Practiced law in Boston. Was also a linguist and author of eminence. Died in Boston.

¹⁰ SALTONSTALL, LEVERETT. (1783-1845.) Born Haverhill, Mass. State Senator 1831. Mayor of Salem, 1836-1878. Member State

February 15.

The *Prisoner's Counsel* challenged peremptorily twenty jurors, and one for cause assigned, that the juror had expressed an opinion that the prisoner ought to be hung. One juror of the denomination of Friends, was set aside on the motion of the *Solicitor General*, because he entertained doubts of the right of governments to institute capital punishments. The following panel was then sworn :

Amos Osborn, Foreman, Danvers; John Barker, Andover; Phineas Barnes, Boxford; Daniel Butman, Wenham; Joseph Bowden, Marblehead; Stephen Chard, Gloucester; Samuel Cheever, Manchester; Nathaniel Felton, Danvers; John McKenzie, Topsfield; John Osgood, West Newbury; James Stone, Marblehead; Freeborn Woodbury, Beverly.

THE SOLICITOR GENERAL'S OPENING.

Mr. Davis. Gentlemen of the Jury: The duties and responsibilities which devolve upon me, in the important and interesting trial which we have now commenced, have created in me the greatest anxiety. This anxiety is much increased by a severe indisposition under which I have been suffering for several weeks, and with which I am still oppressed. I shall therefore hope for your indulgent and candor during the progress of this arduous trial, in the conducting of which my only object will be, to discharge my duty with faithfulness to the Government, which I have the honor to represent, and with liberality towards this unhappy youth, whose crimes have brought him to the bar of his country.

The crime of arson consists in the wilful and malicious burning of the dwelling house of another, in the night time; or the wilful and malicious setting fire to any other build-

Legislature for several terms and Presidential Elector, 1837. Member of Congress for three terms. Died in Salem, Mass.

¹¹ Mr. Saltonstall was on February 14th assigned by the Court as counsel for the prisoner but the next day was excused on account of illness, and Mr. Pickering appointed in his stead.

ing, by the burning of which the dwelling house of another shall be burnt in the night time. The particular charge in this indictment is, that on the night of the 17th of August last, the prisoner wilfully, maliciously, and feloniously set fire to a stable belonging to Phebe Cross; by the burning of which stable, the dwelling house of one Andrew Frothingham, Esq., was wilfully, maliciously and feloniously burnt and consumed, in the night of the same day.

This is one of the most dangerous and atrocious crimes which is to be found in the black catalogue of capital offenses. It is always committed from motives of the purest malice. In the commission of many of the other capital offenses, it may be conceived that something like temptation may exist, though nothing that can amount to a justification or excuse. In treason, the highest crime that can be committed against the laws and constitution, the perpetrator may be often persuaded that he is not only entirely guiltless, but that he is actuated by the highest motives and feelings of a patriot. In murder, the deluded and unprincipled offender may sometimes be instigated by a hope of gain, or by the weaknesses and frailties of the human heart, for which a slight palliation may be sometimes indulged. This is always the case in the crimes of robbery and burglary; the temptation to wicked and unhallowed gain, is, in the commission of these crimes, usually lurking in the heart, and prompting the culprit to the execution of his nefarious purpose. But in the perpetration of the crime of which the prisoner at the bar is now accused, there can exist no motive other than that imputed to him in the indictment, viz.: That the fear of God was not before his eyes, and that he was moved and seduced by a diabolical heart and disposition. Nothing can be contemplated or expected in the perpetration of this crime, but the most terrible and appalling devastation and destruction of the lives and property of the innocent, without the least possible advantage to the malicious offender; nothing but the gratification of the worst and most diabolical passions of the human heart.

The present case presents the horrible effects of this crime

in its most odious and appalling character. The conflagration in which the peaceable and happy dwelling of Mr. Frothingham was involved, threatened a wide and terrific desolation to the inhabitants of the town of Newburyport, which upon this, as well as upon a former still more distressing occasion, seemed devoted to destruction by the hand of an incendiary. Three dwelling houses, and five or six other buildings, in the peaceful silence of the night, were set fire to and totally consumed—the lives of the old and the young exposed to instant destruction in the most terrible form that imagination can conceive—without provocation, preparation or offense. For the prevention of such accumulated distress, all the energies of society must be combined and carried into effect—and unless this can be effectually done, all the objects and enjoyments of life are rendered of no value.

On the other hand, this case interests our feelings in a high degree, on account of the youth and tender age of the prisoner. Whatever crimes or irregularities may have marked and disgraced his conduct at this early period of his life, he is unquestionably a youth of uncommon intellect; and if he had pursued a correct course, might have been a useful member of society.

With these remarks, gentlemen, I will now submit to you a statement of the evidence, which I shall produce on the part of the Commonwealth, in support of this prosecution.

This evidence will substantiate the following facts: That the fire in Mrs. Cross' stable, by which Mr. Frothingham's dwelling house was burnt, was set and kindled on the night of the 18th of August last—that it broke out first on the easterly side of that stable—that it was first discovered by Mr. Fitz, a citizen and magistrate of the town, between two and three o'clock in the morning—that Mr. Fitz immediately alarmed the family of Mr. Frothingham, whose house was on the opposite side of Temple street, in which the stable was situated—that the fire spread and was communicated to two other dwelling houses, and five other buildings, all of which were burnt to the ground. That, from certain facts, to which

the witnesses will testify, there could not exist a doubt but that this fire was set by a malicious and incendiary hand.

It is painful further to state, that the prisoner, during his short career of life, has been of vicious and profligate habits—that amidst the distress and desperation which this fire had occasioned, the prisoner was suspected, even by his own aged and agonized father—that he was thereupon apprehended and examined before a magistrate, and discharged for want of sufficient evidence to commit him for trial. That such were the strong suspicions and fears of the prisoner, his father sent him into the State of Maine, to quiet these fears—that the prisoner threatened before he went, that he would soon return, and set fire to the town in several places, so as it would not be extinguished; that after a short absence, he did return in the manner, and doubtless for the purpose of effecting this work of desolation—that he was providentially detected on his way—arrested, examined and committed for trial.

That after his arrest, and final commitment, he made a free and voluntary confession of his guilt, to Mr. Justice Woart, and the Selectment of the town; that previous to this confession he had been properly informed and advised by this magistrate that he was not bound to accuse himself; that if he did, his confession would be given in evidence against him on his trial; and that if he was convicted, he would suffer death—that after this, upon his final examination, he pleaded guilty to the charge; and that subsequently he made several free and voluntary confessions of his guilt to some of the most respectable citizens, magistrates and clergymen of the town.

I shall also prove to you, gentlemen, that on the morning and day subsequent to the fire, he made a full, circumstantial and confidential communication of all the circumstances and facts relative to the manner in which he set the fire, and completed his hellish purpose. This communication was made to a female, with whom the prisoner had been in the habits of intimacy and confidence. The particulars of this communication will be stated in the testimony of this female,

in which she will be corroborated by the prisoner's subsequent confessions and statements, and by facts to be proved by other respectable witnesses.

THE EVIDENCE FOR THE COMMONWEALTH.

John Fitz. Was alarmed by my wife on the morning of the 19th August last, between the hours of 2 and 3, who told me that the stable, within 70 feet of the house was on fire. When I went to the window saw no person and heard no voice; found Mr. Frothingham's family asleep; knocked at his door and alarmed them. In fifteen minutes after, Mr. Frothingham's house was on fire. There were at that time in Gilman's stable five tons of hay. Am satisfied the fire commenced in Mrs. Cross' stable.

Andrew Frothingham. Was awakened by my daughter and told that the stable opposite my house was on fire. Went to the front of the house, there was then no person moving, and no cry of fire; told my daughter to save her clothes; saved what I could in half an hour. In an hour my house was burnt down. It was between 2 and 3; my

clock struck 3 in 15 or 20 minutes after I awoke. When I saw the fire, the flame was bursting out of the window of Gilman's barn over the shed. Gilman, who occupied it, was a truckman.

Cross-examined. Had sometimes seen and heard persons in Gilman's stable in the evening, which had given me considerable alarm.

Miss Fliza Pike. Went to the door for my brother between 4 and 5 o'clock the afternoon previous to the fire; saw the prisoner come up Charter street, and pass by me to Mrs. Cross' stable, he stopped at a post and looked up to the stable, and then turned and went back; never saw him before; do not know of any boys in the street of his size; know it was the prisoner.

Hannah Downes (sworn). Called to prove the confession of the prisoner.

Messrs. Pickering and King objected to the admission of evidence of his confession, until it was proved that an offense had been committed. The fire might have taken place from the carelessness of Gilman or others, or from the spontaneous combustion of the hay. In a case of murder the defendant cannot be convicted by his confession, unless the dead body is not only found, but some marks of violence appear upon it. This is implied in the expression of *corpus delicti*; the meaning of which is, the subject upon which an offense has been committed. *Delictum* imports a crime. The government in the present case ought at least to show that the building was probably burnt by design. Some facts should be proved, showing that the fire took place by the malicious agency of man. The rule of *corpus delicti* is thus explained by Lord Hale in his Pleas of the Crown.

The Solicitor General said that he had in this case proved the

house to have been burned, and there was a violent presumption that it was by design. It was not necessary to show all the circumstances before giving evidence of the prisoner's confession.

The COURT. Previous to admitting evidence of the prisoner's confession, nothing more is necessary than that the fact had happened which might have been occasioned by the agency of man. Here a dwelling house was burnt in the night time. This might have been by accident, but it might also have been by design. The rule is not correctly stated by the defendant's counsel. It is not true that evidence of confession is not to be submitted to a jury till after proof of a *corpus delicti*. But after all the evidence in the case is submitted, the jury are to determine whether there is a *corpus delicti* proved, and if they think it is not, they will reject the evidence of the confession. Lord Hale's remarks are not intended as establishing a definite rule, but are only by way of caution to the jury. A dead body found without marks of violence constitutes a *corpus delicti*. It is sufficient that the body which is found may have been murdered. So in the present case, as the house may have been burnt by design, therefore evidence may be received of the defendant's confession that he burnt it. There is also enough proved to raise a presumption that it was in fact burnt by design. There is no evidence of lightning or other accident—nor is there reason to suppose the hay caught by self-combustion. Hay is usually put into barns in the beginning of July, and this happened towards the last of August.

When in a state of self-ignition, it appears smoking some days previous to its bursting forth in flame. Nothing of the kind appears to have existed here. There is no evidence of any person having been in the stable the night previous. The late hour of the night also in which the fire broke out raises a presumption that it was by design. It was an hour at which people do not usually go to their barns. This case was like that of a person losing his pocket book in returning from the theatre. He might have dropped it from his pocket by accident; but his having missed it under such circumstances would be sufficient to admit evidence of a confession that it was stolen.

Hannah Downes. On the day after the fire I conversed with the prisoner, with whom I had been acquainted since May last. I was at the fire; saw the prisoner there in the morning after. He walked home to my father's house with me. He talked about the fire. He said: "The fire blazed damned well, and the fellow who set it on fire was a damned good fellow, and if he knew who it was he would treat him." I told him I guessed he knew as much about the fire as

anybody. He nodded his head as though he did and went along. Met him afterwards, about sunrise, and he told me he set fire to the building and what he did it with; that he went to his father's cellar, got a candle, broke it and thought it would not do; then took another. He took some matches and his cigar and went to Cross' stable between 8 and 9 or 7 and 8, I can not recollect which. He went up into the upper loft of the stable, and whilst there he thought he heard

some person in the stable, stopped a little, scraped up a handful of hay and put it under the stairs, put the candle in the hay, lit his match with his cigar and lit the candle and went down from the stable to the fence; he saw a lady passing, stopped till she got by and then got over the fence. After this he went home and went to bed to his father about 9 o'clock so that he might not be mistrusted. About 12 he awoke and thought the candle had gone out. He awoke again at about 2 and the fire had broken out. He awoke his father and told him he believed there was some person going to burn the town down. I was in the jail at Newburyport the week after the fire. Prisoner was there also. Whilst there prisoner wrote me a letter, which I burnt. My cousin delivered the letter to me.

The counsel for the prisoner objected to the proving the contents of the letter by parol testimony; objection was overruled by the COURT, the same being proved to have been destroyed, and never having been in the hands of any officer of government.

William Stanwood. I went to the jail to see my cousin, Hannah Downes. As I was talking with her at the port hole, prisoner called to me to take a letter and give it to her. Took it and handed it in to the girls. I do not know to whom it was given. Prisoner told me to give it into the port hole to the girls. The letter was very small and not sealed. Do not know to whom it was directed or that it was directed to anyone.

Hannah Downes. Mrs. Chase received the letter and immedi-

ately handed it to me. We were both standing at that time at the port hole. The letter was directed to me. I saw Stanwood deliver the letter. I opened and read the letter. At the bottom of the letter it was written: "Don't tell what I have done; if you do, it will undo me." (The CHIEF JUSTICE. Was it not "Don't tell what I told you?" It was something to that purpose. I was in an apartment adjoining to that in which the prisoner was confined. Several times in the course of the night he knocked to me and told me the same words that were in the letter. After he was liberated from jail, he said he meant to go out of Newburyport to the eastward and stay until the people got still and then meant to go to Boston by water and thence return by land until he got to Boynton's, on the turnpike, four miles from town, and stay there until evening and then come into town and set fire to it in three or four places; that when they were putting the fire out in one place it should break out in another. I told him if he should be found out, he would be sent to the State prison. He said he did not care for the State prison; he had as lief go there as not. If he went to the State prison and stayed there twenty years, after he got out he would have his revenge. I do not recollect that he mentioned that he would set fire to any particular place.

Cross-examined. First time I saw prisoner was in May last in the school house. He first mentioned fire to me on Saturday morning after the fire. Mrs. Chase was then with me. He began the conversation. First knew of the fire between 2 and 3

o'clock. My father awaked me and told me of it. Did not see the prisoner the day before, but had seen him on Thursday evening. We conversed about the fires that had happened. I stood at the door a few minutes. He stepped up and put something to my face that smelt like brimstone. I said, "Stephen, what are you going to do with it?" He said, "You will soon know." His cousin, Jonathan Robinson, was with him. Mr. Brown's barn was burnt that evening. Did not see him on Friday. Saw him frequently, but never asked him about Mrs. Lunt. Had not had any difference with Mrs. Lunt, as I recollect. Do not recollect any words having passed between any Mrs. Lunt and myself. There were three or four of that name. Broke off my acquaintance with prisoner in August, after the fire. Do not recollect his father's having charged me with having ruined his son. Attended the examination before Mr. Woart the afternoon after the fire. There were a good many there present. Was sworn and asked if I saw the prisoner the night or day previous to the fire. Answered that I had not seen him. Was on Friday afternoon and evening at Plumb Island. Saw the prisoner after the fire and where. I stated prisoner's confession to Mrs. Chase before I went to the County House. Prisoner made his confession on Saturday morning. Mrs. Chase was then present, but at some distance, and heard part.

Mrs. Sally Chase. Have known the prisoner since June last. Was with Hannah Downes in his company the morning after the fire. He passed us and we would not speak to him. When we

were going home, he followed us through several streets till he came up with us about sunrise. He said it blazed damned well; it was a damned good fire, and it was a damned good fellow who did it, and if he saw him he would treat him. It should not all end there. He meant to have revenge of Newburyport; he meant to go away and return and lay it in ashes. In the afternoon after we came from Mr. Woart's, he and Joseph Lawrence followed us. I did not hear all he said, but he said he meant to take a handkerchief of hay and burn a still house near his brother's bake house. I told him to take care what he said; he said he did not care a God damn; he would have his revenge of Newburyport; he would have his revenge on his brother for opposing his going with Hannah Downes. The letter Wm. Stanwood delivered to me. It was directed to Hannah Downes, and Hannah Downes destroyed it. I read it. Remember that it was, "Hannah, don't, for God's sake, tell what I have done, for if you do, it will ruin me." He halloed through the partition several times in the night not to tell what he had done, for if she did, it would undo him.

Cross-examined. Saw the prisoner twice in the morning after the fire. First time before sunrise; he was at the bank and did not speak to us. The second time he followed us. Left Hannah with him. He first spoke of the fire. Believe he and Hannah were conversing, it might have been five minutes, before I heard the observations after he joined us at the corner of Roberts street. What passed the morning after the fire between Han-

nah and the prisoner, Hannah did not tell me that morning. When we were in the County house, Hannah told me that while she was standing by her mother's house, prisoner came up and took something out of his pocket book and put it to her face. She asked him what he was going to do with it; he said to set fire. His cousin was then so near that Hannah was afraid he would hear what the prisoner said. Some time after the fire Hannah told me that prisoner told her that he put a candle in a piece of wood and put it in the barn. I talker over with Hannah a great many times what I have related. Never told any one before I did Mr. Woart. Wrote to Mr. Woart because I thought it was my duty. Heard Clark was liberated from jail and thought I ought to save the town.

Thomas Wade. I am keeper of the County House. On 22d September, about half past ten, prisoner passed my house. Mrs. Chase said to my daughter, "There goes Stephen Clark." I stepped towards him and asked him to go in. Told Mrs. Chase to go to the door and ask him to come in and to eat and drink something. He appeared loath to go in and very uneasy. I could hardly catch prisoner's eye. Left prisoner at my house and went to Mr. Andrews' office. Returned immediately; met prisoner who turned out of the way to avoid me. Told prisoner I wanted him to go with me. He seemed unwilling to go, but did finally. Told him I would not hurt him. Said he came from Belfast by the way of Boston; that he had come that morning from Salem. Took him into my chaise and carried him to Mr.

Woart's office in Newburyport.

Wm. Woart. 20th September Col. Wade brought prisoner to my office in a chaise; no person was present at that time but myself, my son and Bailey Bartlett; had heard the evidence produced in court and felt anxious; sent my son for the Selectmen; there was a concourse about the door, and a keeper was placed at the door to prevent any one coming in; thought the prisoner ought to know his situation; told him he had been charged with having set fire to the town; took down the law and read it to him; prisoner denied having set fire and was constant in his denial; stated to prisoner he had been betrayed; that those in whom he placed confidence had betrayed him, but that he was not bound to say anything that would criminate himself. Several gentlemen at this time came in and Mr. Bartlett left the office; a number of questions were put to the prisoner about the fire, and he continued to deny having set fire. I asked him several question. Either Mr. Prince or I asked him how he thought it had been discovered that he had taken a candle from his father's cellar way and broken it and then taken another and carried it to the stable, etc. He started from his chair apparently agitated and said, if you will tell me how you got that information, I will tell you all about it. I then told prisoner that I had my information from Hannah Downes, Sally Chase, Eliza Manly and two others, whom I was not at liberty to name, to-wit, Col. Wade and Stanwood. The prisoner immediately said, "I done it." Mr. Prince previous thereto had said to the prisoner, on his denying

the charge, that if he was disposed to go to the Old Harry, he might. Prisoner said neither of these you have named know anything about it except Hannah Downes; she is the only one that knows anything about it. I requested Mr. Bagley to take charge of the prisoner until after dinner. In the afternoon, issued a warrant against prisoner and went to Mr. Bagley's house to examine him; when he was brought into the room, Mr. Marston and several other gentlemen were present. I read to him the complaint, warrant and the officer's return, but told him previously that he was not bound to criminate himself; that if he did, it would be given in evidence against him. When I asked prisoner if he was guilty or not guilty, he said not guilty. Asked prisoner what he meant by not guilty; he said he did not burn all the buildings. Asked prisoner if he set fire to the barn in Charter street; he said he did, but not alone. I then said: "We understand what you mean," and asked him again, guilty or not guilty. He then said guilty.

Cross-examined. Col. Wade had no process with him. Prisoner was ten minutes in my office before the Selectmen arrived. Did not at that time consider myself as acting as a magistrate; might have said to prisoner that he had better confess, but have no recollection whatever of making such observation. It was about 1 o'clock when prisoner made the confession, but it was not until after he was informed of the evidence against him. There were several questions put to prisoner; he was asked where he had been and how he returned. Do not recollect that any one

said to prisoner that he had better confess, but Mr. Prince might, however. I said to the prisoner that he had the boldest face I ever saw at a previous examination, a month before, when the prisoner had made use of very improper expressions. One gentleman said to prisoner if he had any accomplices he had better name them, and then or in the afternoon he named Joseph Lawrence. I read the law to the prisoner, that he might understand before any question was asked him that the punishment was death. Have no recollection that it was said the evidence was such that the prisoner could not get clear. I so considered the evidence, and it is possible, though not probable, that I expressed that opinion to the prisoner. Mr. Pearson stood at the door. I did not ask him to stand there, but as he stood there, I requested him to prevent any one from coming in, as there were a crowd of boys about the office. I did not send for the prisoner's father. His father having before made complaints to me against his son was the reason. There was a considerable collection of boys about the office, and I thought no one should come in until the prisoner was examined.

Stephen W. Marston. When he arrived at Mr. Woart's office, Bailey Bartlett was there. I said to prisoner, you have come back sooner than we expected; we knew you were coming but did not expect you so soon as this, and told him that we had sent for him. He said he staid a few days at Belfast with his brother, who had another apprentice, and did not want him. Very soon after he came to the office, Mr. Woart read to prisoner the law,

and stated to him the offense of setting fire in the night time. Prisoner was told he was not bound to criminate himself, and the evidence against him was stated to him. There were five or six persons then present, and all asked him some questions respecting the candle, and in which barn it was placed. At first, prisoner said he knew nothing about it. Mr. Prince asked him how he supposed they knew such and such things (stating to him the evidence they had.) The prisoner then said, tell me who told you this, and I will tell you all about it. When Mr. Woart told him who were their informants, he said, I done it, and stated the manner; he said, he got through the barn, on the back side, near a hog-pen, and put the candle in the hay, and went off, and left it; he said, he did it at about nine; that the bell rung for nine just after he got over the fence into the street; he said he entered from Charter street, and returned to the same street. When prisoner was examined in the afternoon, Mr. Woart told him that he knew the law, and that the punishment was death; that he was not bound to confess, and any confession he might make would be given in evidence against him. He answered, not guilty of the whole. They explained to him that it meant, whether he was guilty of setting fire to the barn or not; he said he was—in the upper story on the floor. He did not know whose barn it was. He said he went into the barn where a board was off. Heard no promise or threat whatever made use of to the prisoner. He was not informed that he might have the aid of counsel.

Seth Sweetser. A fortnight after the prisoner's commitment I visited him with Dr. Dana. Doctor told him he understood he had acknowledged that he had set fire to the buildings—he said he had, and that he was not alone—that one Joseph Lawrence was with him when the fire was set. Dr. Dana told him he pitied him, and prayed with him. Major Perkins, Major Sweet and Mr. Bagley were present.

James Prince. Mr. Woart read to prisoner the law, and told him the punishment. I asked him if, when he put the candle under the stairs, he did not go out to see whether it shone through the barn; he said he never was in the barn; I then took up my hat to go, and said to him, if he was a mind to go to the devil, he must; I stopped, however, and asked him various questions relating to the candle, and other circumstances. Mr. Woart then said to prisoner, you are betrayed, and told him the evidence against him. He answered, I done it; and then went on to state the manner, and said Joe Lawrence was with him; he told how he set Mr. Brown's barn on fire; said he had some rags and made a match. He said he met Lawrence in Green street; said that Lawrence smoked; don't know that Mr. Woart made any observations on the statute, except that the punishment was death; believe he said to him, that he had better confess the truth; but after that he denied his having been in the barn, and did not confess until he knew the witnesses against him.

William Cross. Went to see prisoner, with Capt. O'Brien, in jail, the day he was committed,

at 4 o'clock, before his examination. He came to the port hole; said to prisoner, that I was sorry to see such a likely young fellow there for such a cause. He said, so am I but I cannot help it. Told him we came from the Selectmen to ask some questions; told prisoner that he was not bound to criminate himself or any one else, but that they wanted to know if any one else was guilty. I then asked him if he set fire to the barn in Charter street; he answered I did, and Joe Lawrence was with me; he said they set fire to that place because Lawrence had a pique, or spite, against somebody there; he told how he set it on fire. He said that Lawrence had the match in his pocket; he thought somebody came into the barn whilst they were there; they sat down, he propped the candle up with a bunch of hay; he said the front side of the stable was clapboarded, so that the light could not be seen through. He said after he left the barn he went home and went to bed with his father. I asked him if he was willing I should state what he said to the Selectmen. Prisoner said he did not care, that I might tell it to whom I pleased.

Joseph O'Brien. Was present with Major Cross and confirm fully what Major Cross has stated. When Cross asked prisoner who set fire, he said not he alone, but Lawrence. I asked him if he did all himself and if Lawrence only looked on; prisoner answered no, Lawrence carried the fire with a cigar also asked prisoner if he lit the candle with a cigar; prisoner supposed me ignorant that a candle could not be lit with a

cigar, and answered, "devil no, we had matches;" said Lawrence had matches in his pocket book.

Wm. B. Bannister. About ten days after prisoner's commitment, he attempted an escape, and being one of the committee who have the charge of the county buildings, went at the request of several of the inhabitants to the jail to see if the prisoner was securely confined; said to prisoner that he had come near escaping. Prisoner said nobody could blame him for it. I then made remarks to the prisoner on the character of the crime for which he was confined, and on the probability of his life being taken. Prisoner looked grave, and appeared considerably impressed. He said he set the fire; he had no good reason to give for it, but Lawrence was with him and had stimulated him. That Lawrence had a pique against some of the neighbors. He told the manner in which the fire was kindled. He said that it was put under the stairs, and so situated that no one could see it; had never seen the prisoner before.

Dudley Gilman. Was in Gilman's stable the evening of the fire just before 9; opened the door and heard a stepping in the loft. Thought I heard somebody strike against an empty flour barrel that stood there. The bell rang just after I left the stable; had sometimes carried a light, but not for some time before the barn was burnt; brother, who occupied the stable, was at home that evening; went into the barn to fodder my brother's two horses. Sometimes I took a light and sometimes not. There were 7 tons of hay, horses and wagons burned up.

MR. KING, FOR THE PRISONER.

Mr. King. Gentlemen of the Jury: I have been assigned by the Court one of the counsel for the prisoner at the bar, and it is now my duty to state to you his defense. This is a duty which every counsellor is bound to perform as he may, when commanded by the Court to undertake it—but I might well wish to decline it, when I reflect that some of the most experienced advocates when called upon to address a jury in behalf of a prisoner on trial for his life, have approached the task assigned them with trembling hands, and sinking hearts. The responsibility of this duty, gentlemen, even under the most favorable circumstances, is one of peculiar weight, of painful embarrassment, of fearful anxiety; a duty, under the burden of which the promptest tongue might falter, and the firmest heart despair.

What, then, must be the solicitude of the counsel for the prisoner at the bar, under the peculiar difficulties which surround his case—when we see our client, scarcely beyond the period of childhood, coming to the bar friendless and alone, and cast upon the mercy of the Court, and upon the kindness of strangers for even an attempt to defend him! When we see him thus feeble and defenseless, the object of the resentment and vengeance of a whole town, a town which has suffered most severely by repeated and aggravated instances of the crime, for which the prisoner is indicted, and whose respectable citizens have been unfortunately led, by the wicked arts of the most abandoned of women, to lay the whole weight of the guilt of these crimes upon the head of this defenseless boy!

Still further to increase the difficulty and delicacy of the task his counsel have to perform, he has himself been made to furnish the weapons which are to be used for his destruction. His life is endangered not by his guilt, but by his folly—by the weakness of his youth, and the ignorance of his

^{11a} KING, JOHN GLEN. (1787-1857.) Born Salem, Mass. Graduated Harvard; member both branches of Massachusetts Legislature; conducted Prescott impeachment; first President Salem Common Council; a founder of Essex Historical Society; Master in Chancery and Commissioner of Insolvency Essex County. See Osgood (C. S.) Hist. Sketch of Salem.

humble station; and if his blood must be shed, it will be a sacrifice to weakness and not to crime; to ignorance of his own rights, and not to any violation of the rights of others.

Your own duty, gentlemen, upon this occasion, permit me to remind you, is one of immense importance—to the prisoner at the bar—to yourselves—and to the whole community. It is not likely that any of you have ever before been engaged in any transaction of a character so interesting and solemn, and whose consequences will be, to all concerned in it, so important and awful. It is indeed, gentlemen, no light thing to sit in judgment upon the life of man! Your responsibility is here directly to your God, and you must answer it to your consciences and your country, that your decision shall be correct, as well as that your intentions shall be upright; and see to it, gentlemen, that innocent blood be not required at your hands!

Gentlemen of the jury—the prisoner only asks of you patient attention, an unbiased and deliberate consideration of his defense, and that righteous decision which he is warranted to expect from men of your humane dispositions and honorable minds. To this decision the prisoner looks with humble hope—for he says that he is innocent of the crime of which he is accused—to this decision his counsel look with confidence—for they have reason to believe, that, upon the defense which may be made out for him God will send him a good deliverance.

Before I proceed to state to you the facts which will appear in evidence on the part of the prisoner, and on which his defense will rest, permit me to call your attention to some considerations which seem to me to be highly important to a right decision under the peculiar circumstances of this case, and particularly with a view to the kind of evidence with which the indictment is supported.

Every man, gentlemen, by the law of the land is presumed to be innocent, until he is proved to be guilty. This is true of all offenses which can be committed against the laws. And it is in the highest sense true of an offense which puts in danger the life of the accused. Here suspicion is to weigh

nothing—it may well justify inquiry and examination, but will never warrant a conviction. Never should a jury return a verdict against a prisoner, which cuts him off from life, without the most clear, certain, and unanswerable evidence of his guilt. If a single reasonable doubt can be raised, it is to save the accused—all your leanings are to be towards the innocence of the prisoner—all your doubts in favor of human life. If then, gentlemen, there are found in this case, circumstances which appear to you irreconcilable with the guilt of the prisoner, he must be acquitted; however strongly against him the general current of the evidence may run, if one solitary material fact can be found well proved, which is inconsistent with the supposition of his guilt, that fact is to save him. You are not nicely to advance the probabilities of his guilt against the improbabilities, for then innocent blood might fall a sacrifice to any involuntary error, which might occur in determining the balance of this account of life and death!

The inference, gentlemen, from these remarks, will not escape you. It is, that you should examine the evidence produced against the prisoner with the most anxious and vigilant circumspection; that you should require testimony of such weight and character as will place it beyond a doubt, not that the prisoner may at some time have said that he was guilty, but that upon the case proved he cannot be innocent—such testimony as will render it morally certain that he must have committed the crime, and that none other could have committed it, before you consent to take away his life by a verdict against him.

Another principle, gentlemen, which is as sound in law as it is in religion, is that “it is better that ten guilty should escape, than one innocent person suffer.” And this you are bound to keep constantly in view in considering the evidence upon this trial.

Gentlemen, the first object of penal laws is the security of the blessings of social life, the protection of the innocent in the enjoyment of all their rights and possessions. But if these laws are made use of as instruments to punish the inno-

cent for the crimes of the guilty, this security is fatally interrupted; and the confidence of men in the administration of the laws is destroyed, when they see the life of an unoffending citizen taken from him under the forms and solemnities of justice. The influence of punishment, too, is of little effect, when it is rendered uncertain whether guilt will meet with its proper punishment, and innocence prove its own protection. Since, then, the design of providing penalties for the punishment of crimes, is not that the guilty may be punished, but that the innocent may be protected; and since this punishment is only used as one of the means to carry this design into effect, the first duty of a jury must be to attain the object of the law, to provide that no injustice be done to the accused, and that the end be not sacrificed to the means. When the guilty escape, the law has not indeed fully accomplished its object; it may have done no good, but it has done no harm. But when the innocent become the victims of the law, the law is not merely inefficient, it has not merely failed of its intended effect—it injures the person it was meant to protect—it creates and extends the very evil it was to cure—it destroys the security it was made to preserve. You are, moreover, to observe, gentlemen, that when the life of an innocent man is taken away by a judicial act, a two-fold evil is inflicted upon society—the end of the law and the means of attaining it, are alike defeated—for the punishment of the innocent is always attended by the escape of the guilty. Amidst the very crowd, which will be drawn out to gaze upon the miserable youth at the bar, if your sentence shall send him down to his grave,—amidst the very crowd which will follow him to his fate—may be lurking the real incendiaries, who will reflect with scorn upon the easy faith with which you have suffered their well covered conspiracy to triumph over innocence.

There is another subject, gentlemen, upon which I wish to make a remark to you. Something has been said of the previous bad character of the prisoner. Of this, gentlemen, his counsel know nothing, and can admit nothing; but upon this subject you are bound to be most religiously scrupulous

and cautious. If this prisoner is to be convicted, it should be because the jury cannot avoid the conclusion that he is guilty—because the evidence furnishes no room for a doubt. He must be convicted for being guilty of the crime charged upon him, and not for his bad reputation. For this he is not called upon to answer—for this he is not put upon his trial—and against this he cannot be supposed to be prepared to defend himself. But if the badness of his character is to be one of the reasons which influence the jury to convict him, it is impossible for them to say how large a share it may have had in procuring their verdict—they can never determine, but that they should have acquitted him upon the evidence, if his reputation had been fair before—they never can be sure, that they are not sending him to his death, not for the crime for which he is accused, but for his bad reputation, which may have been fixed upon him by slander, falsehood and malice. Let this consideration, then, gentlemen, have no bearing upon your verdict, as you regard the oath you have taken, the life of a fellow man, and your own peace of mind.

Let me now call your attention, gentlemen, to a circumstance, which most deeply and injuriously affects the prisoner at the bar, and, if not guarded against, may preclude the possibility of his having a fair and impartial trial. You will have perceived, gentlemen, that all the witnesses for the government belong to the town of Newburyport the place in which the crime was committed, of which the prisoner stands accused. You well know the dangers and sufferings from this crime, which for years have attended the respectable inhabitants of that ill-fated town. You all know the high excitement and public alarm which prevail there on this subject. But you have not all been witnesses of scenes, which might force upon your minds an adequate conception of the causes of this excitement. You do not all know the horrors of being aroused from your sleep by the glare of your burning dwellings, by the fearful outcry of distress at midnight! You have not all experienced the disaster and public alarm, which are spread around by frequent conflagra-

tions in large towns; by fires, kindled by an unseen hand, the time and place of whose commencement, and the extent and terrors of whose devastation, no man can foretell, and against which, therefore, no human prudence can provide. In this state of society, life and property lose their security, consternation seizes the public mind, and all are on the alert to discover some evidence which may lead to a detection of the perpetrator of these mischiefs. It is not wonderful, then, it is natural, it is necessary, that in this state of alarm, this panic, the lightest suspicions should assume the form of the clearest proofs, and that efforts should be made to obtain confessions from those persons suspected, which at a time of less excitement, those who use them would be the last to approve. Gentlemen of the jury, I entertain the highest respect for the citizens of this unfortunate town, and make every allowance for the natural effects of their situation and sufferings; I believe that the gentlemen who have testified in this cause are wholly incapable of intentionally varying from the truth—we only wish to guard the fate of the unhappy youth at the bar, from the influence of the public feeling which now exists among them. I then say, gentlemen, that the inhabitants of Newburyport, though legally competent to give evidence against him, stand in the light of parties in interest; they are in fact the prosecutors against the prisoner, armed with the name and power of the government, and are, as they believe, directly interested to procure his conviction. Do you ask how they are interested? They are led to believe that if this prisoner shall be convicted and punished, their town, their lives and property will be safe—this poor lad once laid in the grave, and the unguarded hour of midnight has again all the security of noon-day! Is it possible for you to believe, gentlemen, that witnesses, who entertain these views and feelings, can exercise that unbiased judgment, that fair consideration, which should ever mark the testimony by which a jury is to be governed in a capital trial? No; the public excitement is too powerful and extensive to permit even the strongest and most honorable minds to escape its influence. Gentlemen of the jury, from

this pernicious influence, working in silence for his ruin, the prisoner flies to you for refuge—and I beseech you, let it not enter the sanctuary of justice, to deprive him of a fair and impartial trial by a jury of his country.

You have observed, gentlemen, that there is no direct and positive evidence in the case that the prisoner at the bar committed the crime for which he is indicted. The case the government has proved against him depends altogether upon his own confessions. If the persons to whom these confessions are said to have been made in the first instance, are persons of infamous character, and not to be believed, or if the confessions were obtained by any undue influence, by any promise or threat, however slight, the indictment is not supported, and you are bound by your oath to acquit the prisoner.

On this branch of the prisoner's defense, gentlemen, it will be proved to you by the testimony of many witnesses, that Hannah Downes and Sally Chase, the persons who first pretended to have received a confession from the prisoner, are women of notoriously profligate character, and had been but a short time before the disclosure of these confessions, committed to the House of Correction as "night-walkers," and "persons of lascivious behavior;" that they are persons on whose word no reliance can be placed, that they had been complained against by the father of the prisoner for their improper behavior, and had repeatedly threatened "to be the ruin" of the unhappy youth at the bar.

From the evidence we shall offer to these points, gentlemen, we trust you will be fully satisfied that nothing which these witnesses have testified to you, is entitled to the least degree of credit, since they were malicious enough to threaten the ruin of the prisoner, and of such immoral and depraved lives as to be likely to resort to the most abominable means to effect their cruel purposes.

With regard to the subsequent confessions made to Messrs. Woari, Prince, Marston, Bannister and others, we shall submit to you, gentlemen, that they appear from the government's own witnesses to have been made under such circum-

stances of restraint, or of judicial parade, or religious solemnity, under such express or implied promises and threats, as entirely forbid your considering them as the voluntary and free confessions of a crime, with which the conscience of the prisoner was charged, and which he could no longer endure to conceal.

But, gentlemen, we have another defense to offer for the prisoner, which goes to prove that he could not have committed the crime with which he is charged, because, at the time when it must be supposed to have been committed, he was in another place.

I shall now proceed to state to you, in few words, the facts which will appear in evidence, and which, we believe, will satisfy you that a complete *alibi* is made out in favor of the prisoner, and that, of course, your verdict must deliver him from the danger in which he now stands.

On the afternoon of the day preceding the fire mentioned in the indictment, it will be testified that the prisoner, his two sisters and their cousin, Jane P. Bray, of Gloucester, who was then on a visit to the family of the prisoner's father, took their tea between 4 and 5 o'clock, and about 5 o'clock set out from their residence in Ship street to take a walk about the town to gratify the curiosity of their visitor, who was now for the first time in Newburyport. They first called at a Mrs. Mace's in Titcomb street to invite Betsey Clark, an acquaintance of Miss Bray, to accompany them on their walk. After a short delay at Mrs. Mace's, they went to the house, formerly Dexter's, where they remained some time looking at the statues; thence they pursued their walk through several streets, walking leisurely, that they might have opportunity to point out to their visitor anything worthy of her attention about the town. Their walk, the route of which will be particularly described by the witnesses, ended at a Mrs. Hoyt's in Water street, where they remained till about half past 8 o'clock, and then set out on their way home, where they arrived a few minutes before nine. These witnesses will testify that during the whole of this evening, from the commencement to the close of the walk, the prisoner was not out

of their sight; that upon their return home, the prisoner went for a short time into the back yard, returned again just after the bell had done ringing nine o'clock, and retired to bed. The testimony of these witnesses will be confirmed by that of a Mrs. Peters, who lived nearly opposite the residence of the prisoner's father, and saw the young women returned from their walk in company with the prisoner a few minutes before nine. She will also testify that she went into the shop, kept in the house of the prisoner's father, just as the nine o'clock bell had done ringing, on an errand, and then saw the prisoner standing in the kitchen, the door between the shop and kitchen being open. It will further appear from the testimony of Eliza Clark and Mary P. Clark that when Mrs. Peters came into the shop, the prisoner had returned from the back yard, so that his absence could not have been many minutes.

Moses Clark, the father of the prisoner, will testify that, being ill of rheumatism, he retired to bed about eight o'clock on the evening of the fire; that he was kept awake by pain and heard his daughters, niece and the prisoner return home a few minutes before the bell rung for nine. That he distinctly heard the voice of his son in the room below; that a few minutes past nine o'clock the prisoner came to bed to him and was in bed with him until the alarm of fire was given; that being in considerable pain, he scarcely closed his eyes during the night; that his son was soon asleep and, as he believes, slept all night; that when fire was cried, his son was asleep and was awaked by the witness; that the son got up, went to the window and, partly dressing himself, went out of the chamber with his jacket in his hand to go and see where the fire might be. Eliza Clark will also testify that she met the prisoner coming out of his father's chamber at the time fire was cried with his jacket in his hand, and their testimony to this point will be corroborated by that of Mrs. Peters, Mrs. Follansbee and Mr. Isaac Johnson, who all saw the prisoner coming out of his father's house soon after the alarm of fire was first given.

On this evidence, gentlemen, we think you will be satisfied

that if the crime of which the prisoner is accused was perpetrated at any time between the hours of four in the afternoon of the 18th and two of the morning of the 19th, it is impossible that he could be guilty of it.

It is not my duty, gentlemen, in the present stage of the case, to remark upon the evidence for the prosecution, but I shall now proceed, by leave of the Court, to call the witnesses for the prisoner, and if the evidence shall establish the facts I have before stated, I can not doubt that you will promptly acquit him of the charge which has brought him to the bar of his country for trial.

THE WITNESSES FOR THE PRISONER.

Moses Clark. Am father of the prisoner. Returned home from market on the evening of 18th of August at 7. Was much affected with rheumatism. I went to bed at about half-past 8. When I came home my son and daughters were absent; heard my son's voice when he came in; I had not then been asleep, and about five minutes after 9 my son came to bed and soon went to sleep; I hardly lost myself for the night; my son, the prisoner continued asleep until fire was cried, when I awoke him and told him to go and see where the fire was. He went to the fire. The reason my son slept with me was that they had a young lady from Gloucester, a cousin, visiting them, and not beds sufficient; son slept with me and the young lady with my wife; son returned home before 9 o'clock; heard the cry of fire before my son; lived half a mile from the fire.

Mary Pearson Clark. Am sister of the prisoner; came home at 4 and took tea, and stayed in the house until 5; went out and walked in the evening, and came

home just before 9, about five minutes past 9 prisoner went to bed. Was at Mrs. Hoyt's half an hour; we went to show our cousin the town. We went to Mrs. Mace's and Mrs. Hoyt; prisoner stayed with us all the time.

Cross-examined. Am positive that it was not the night of the previous fire (Thursday). The evening before were at Mrs. Robinson's three-quarters of a mile from their house and returned home between 9 and 10 o'clock. Our cousin from Cape Ann was with us the afternoon before (Thursday). Our cousin had been there a week and had been at Mrs. Robinson's before, but in no other part of the town. On Friday afternoon we left home about 5 o'clock, went through Middle street, up State street to High street and stopped at Mrs. Mace's 15 minutes, in Titecomb street, half a mile from her father's. Left Mrs. Mace's at half-past 5, then went up into High street to Dexter's and there stayed 5 or 10 minutes; prisoner was with us all the time. We returned through Boardman

street, down through the market, to the lower end of the town to Mrs. Hoyt's. Mrs. Hoyt's house is below father's half a mile; stayed at Mrs. Hoyt's half an hour and came from thence right up home; got home a few minutes before 9. The bell rang a few minutes after we got home. When we came home father was abed. It was better than half-past 9 when we went to bed; left Mrs. Hoyt's at half-past 8. It was star-light but no moon. It was candle light when we left Mrs. Hoyt's.

Eliza Clark. Am sister of the prisoner. We drank tea at 4 o'clock, and at 5 set out to walk; stopped at Mrs. Mace's a quarter of an hour and at Dexter's 5 minutes; returned through Boardman street to Mrs. Hoyt's, and stayed there about half an hour; prisoner was with us all the time. After we got home prisoner talked with us a little while and went out of the back door into the back yard and stayed about 5 or 10 minutes. Mrs. Peters came in just as the bell was ringing; after prisoner had returned we went to bed just before 10, the prisoner a few minutes after 9. In our walk made no other stops but walked slow. I did not attend public worship the Sunday previous.

Jane P. Bray. Prisoner was with us from 4 in the afternoon until 9 in the evening when he went to bed. We were at Mrs. Mace's about a quarter of an hour. Stopped at Dexter's 5 minutes; walked very slow; went down to Joppa to Mrs. Hoyt's, and stayed there half an hour. Left Mrs. Hoyt's at half-past 8; went to bed between 9 and 10. Prisoner went out at the back

door for 5 minutes. He came in the same door and then went to bed; did not stop at Mrs. Hoyt's more than half an hour.

Betsy Clark. The prisoner, with his sisters, was at my sister's, Mrs. Mace's about 6; went with them up High street. We went to Dexter's, but did not stay there any time, just looked at the images and then came back and went to Mrs. Hoyt's and left there about half-past 8; got home just before the bell rang, it rang soon after; was acquainted with Miss Bray; knew it was the night of the last fire.

Ruth Peters. Live near prisoner's father's house. Saw the prisoner with his sisters and Miss Bray pass my house about 10 minutes before 9; saw him again when the bell rang for 9 in his father's house. I went to his father's shop for candles. As I stood in the shop could see prisoner in the kitchen; recollect the time from the circumstance of my having wished my husband to go with me and see where the fire was on the preceding evening. I saw prisoner when the fire was, coming out of the house. Mary P. Clark got the candles for me.

Mrs. Judith Mace. Saw the prisoner the evening before the fire at 6 or half-past. He was at my house 15 minutes or half an hour. Betsy Clark returned home 15 minutes before the bell rung. It was half or three-quarters of an hour after sundown when they left my house.

Ruth Follansbee. Immediately after the cry of fire saw prisoner come out from an alley leading to the front door of his father's house. He walked towards

me and said he thought me one of his sisters.

Eleazer Pettingill. Know Hannah Downes. She does not bear a very good character in my neighborhood; am one of the overseers of the Poor. Her mother and she have both been in Newburyport Workhouse. Their house is a bad house, and her general character that of a loose woman. Her father is at sea. Hannah Downes and Sally Chase have been committed to the County House as night walkers.

Henry Adams. Hannah Downes lived in my house and she behaved very unbecomingly, and was carried to the House of Correction. Nobody will pay attention to her word—she is considered as infamous—nobody will believe her upon her word.

Samuel Brookings. Hannah Downes' life has been pretty loose. She can't be charged with theft or lying; never heard any thing against her character for truth; she is quite young, has been a loose woman these two years. Sally Chase, alias Sally Hobson, has been in Newburyport twelve months; there would be more confidence placed in Hannah Downes than in her.

Isaac Robinson. Hannah Downes is called a very loose character, and it was so proved when she was carried to the House of Correction. Her mother was taken sick, and she was released from the County House to take care of her; after her mother died, she moved into Mr. Adams' house, and she had every night young fellows and lads, who raised a mutiny; never heard she told the truth; never heard of her having any character for

truth; would as soon believe the devil as her. Sally Chase is called a woman of the town.

Benjamin Perkins. Heard prisoner's sister say to Hannah Downes that she would be the means of undoing him, and she answered that she meant to; thinks this was after the fire.

Joseph Wyatt. Attempted to go to Mr. Woart's office and Mr. Pearson prevented me.

John Greely. Was prevented going into Mr. Woart's office; Mr. Pearson would not permit me; had no object in going there but to see prisoner; there was a concourse of boys round the office.

Moses Clark (recalled). Went to Hannah Downes' house a fortnight before the fire, after my son, the prisoner; had understood that he visited there, and went there to find him; said to Hannah Downes, what do you mean by enticing my boy? She asked what I thought she wanted of such a lad? Told her I did not know, unless it was to undo him. She said she meant to; told my son he should go down to Belfast and stay with brother. If brother did not want him, and he could not get a voyage there, he might come home by the way of Boston and get voyage there or at Newburyport; complained of my son because I thought these girls would ruin him; could not keep him from them and called on the Selectmen and Mr. Woart for assistance; son was taken on suspicion of having set the fire on Thursday evening. I never had any apprehension of my son except from keeping the company of such women; did not fear any other mischief being done by him.

IN REBUTTAL.

William Woart. Mr. Clark called on me and said he had been to see the Selectmen; that his son had left his employment, and was at Joppa and in bad habits. After his son was committed when his father applied for his discharge, he said the prisoner should go away, he would get a voyage for him. When he came for him, he said he would send him to Belfast, and not let him return. The first evening Hannah Downes was at my house she was there an hour, and she at first insisted that she knew nothing about it. After great reluctance she testified as she had done. The reason of her reluctance to confess, was her promise of secrecy to the prisoner.

S. W. Marston. Mr. Clark wanted the Selectmen to take care of his son, the prisoner. He said his son had left his place; that he had done everything he

could to induce him to stay at his place, but he had become so bad he could not do anything with him; was afraid if something was not done with the prisoner, he would do some mischief; said he had forbid his son's coming into his house, but his wife let him in; said he could not sleep nights, for he was afraid he should wake up and find the town on fire. There was a great excitement against Hannah Downes and Sally Chase because they had been in company with the prisoner.

Col. Wade. Hannah Downes was in the County House about a week. Sally Chase was confined there about a month, when I had an order from the overseers of Newbury for her discharge. She behaved very well whilst there—and after her discharge, she returned and lived in my family as a domestic, she has continued to behave very well.

February 16.

The *Solicitor General* stated that since the adjournment, he had learned the existence of some new evidence which he wished to introduce; that he had in the prisoner's defense been perfectly surprised; that he had not known, until within two days, that an attempt would be made to set up an alibi; that as soon as he was aware of this defense, he immediately dispatched a messenger to Newburyport for evidence to meet it, and that the witnesses he wished to introduce were sent on in consequence and arrived in the night after the adjournment of the court.

The COURT permitted the witnesses to be called.

Ephraim Sweet. Saw the prisoner at my shop in Temple street previous to the fire. He

came in and asked the privilege of lighting a cigar and went immediately off. This was between

5 and 10 o'clock. From my shop to the seat of the fire was less than a quarter of a mile; prisoner called at my shop between the time of my lighting my lamp and 10 o'clock. I usually lit my lamp about dusk, at the same time that other persons light their candles, and I usually shut up shop about 10; have lived 15 years in Newburyport and known the prisoner all that period. My shop was in the nearest course from Mr. Clark's house to the seat of the fire. Prisoner was never in my shop before; never saw him have a cigar before.

Edmund Smith. Saw prisoner at about 5 o'clock the afternoon before the fire. Prisoner was then by the Engine house in Marlborough street, three-quarters of a mile south of State street. He was standing idle, leaning against the fence, as I had seen him many times previous. No person was with him; know prisoner perfectly well. I saw him as I passed by in a wagon. I had been into town with my wagon and know it was on Friday. I might have seen him there on Thursday also. Have seen him there repeatedly.

MR. PICKERING FOR THE PRISONER.

Mr. Pickering began by observing that, in consequence of circumstances already known to the jury, he had been very recently assigned as one of the counsel for the prisoner at the bar; that the privilege of having counsel thus assigned in cases affecting the life of a person accused flowed from that humane and benignant spirit which pervaded the laws of our country, and if there ever was an occasion for the exercise of that humanity and tenderness, which distinguish the judges who administer our laws, the present was such an one—when a youth of sixteen who, in contemplation of law, is not of sufficient capacity to make choice of counsel and is of too tender an age even to know that he has a right to that assistance, is put on trial for his life. If, indeed, this unfortunate youth had fully known his legal rights, if the magistrate before whom he was arraigned had kindly reminded him of those rights before confessions were drawn from him in the manner which will presently appear, a jury of his country would probably never have been called upon to discharge the painful duty of sitting in judgment upon him for the offense now charged against him. He might, perhaps, with the assistance of counsel at that time, while events and circumstances were fresh in the recollection of witnesses, have

been able to show that the present accusation against him was unsupported; that it was the result of a foul conspiracy of the abandoned females who have been brought here as his accusers, and one of whom, as it appears in the evidence, has threatened "to ruin him." But unhappily for him, he had not the advantage of professional assistance on his examination, nor of the advice of his aged father or any friends of mature years, who could have apprised him of his rights; he is, therefore, now brought before the jury under all the disadvantages which are the natural consequence of being deprived of such essential aid and support. But, circumstanced as he now is, nothing remains for him but to defend himself against the present charge with such means as are still in his power.

In addition to these disadvantages, the prisoner has to contend not only against the legal evidence brought here against him, but he has also to combat the excited feelings of the inhabitants of that unfortunate town where this calamitous fire took place, who, as my colleague has remarked, though legally competent to give evidence against him, yet come here with much of that strong feeling which belongs to persons who are parties in a cause. The naked, undistorted evidence of facts may be encountered by an accused person with some hope of success, but who can sustain a conflict with the invisible influence of one of the strongest human passions, the passion of terror, which may take possession even of the fairest and most candid minds? Yet such is the conflict in which this defenseless youth is now to engage; he has already been tried and condemned in the minds of all the witnesses who are now brought against him, the most respectable and fairest of whom can not, unless they are more than human, wholly divest themselves of that panic which has so long prevailed in their devoted town.

What, then, must be the embarrassment of the prisoner's counsel in entering upon his defense? It can more easily be conceived than described. They can only implore you, gentlemen, to give a patient and candid hearing to his cause, and to insure this, they trust it is sufficient to remind men

of your impartiality that the life of one of your fellow men is at stake. When, indeed, his counsel reflect upon the uncertainty of this poor prisoner's fate—when they consider that it may be decided by the perjury, by the mistake or the misconception of a single witness, or by the misapprehension of even the most cautious and impartial jurors, they are filled with the deepest anxiety for the result of the present trial. And why is it that Providence, in its wisdom, has permitted so much uncertainty to exist in subjects of the highest moment to us? Is it not for the purpose of teaching us caution and humility and candor when sitting in judgment upon the lives of our fellow men?

The Solicitor General has remarked to you, gentlemen, that his only object will be to discharge his duty with faithfulness to the government which he represents in this place and with liberality towards this unhappy youth. The prisoner's counsel may also remark that they are equally disinterested in this case, and they believe that, while they are defending the rights of this prisoner, they are at the same time defending the cause of every individual of the community and securing the stability of that mild and humane government which it is the interest of every individual to cherish and support.

Every man, let him be in ever so little hazard of being brought to the bar of justice, has a deep interest in the impartial administration of the laws, and so far has a deep interest in the event of the present trial. The prisoner's counsel therefore feel that they have a right to call upon you, gentlemen, for all that patience and caution in the case of this humble youth which you would think yourselves bound to exercise towards an accused person of the most exalted rank—which (if you will pardon the suggestion) you would demand from the prisoner himself if the case were reversed and, instead of now being at the bar, he were sitting in judgment upon any one of you.

What, then, is the offense alleged against this prisoner? It is, in the language of the indictment, for having in the night time "feloniously, willfully and maliciously set fire"

to a certain building in one of the towns in this county, by means of which a dwelling house was burnt and consumed. The crime is undoubtedly one of the blackest dye and will very naturally excite the indignation of a jury against the perpetrator of it. But the very circumstance that it does thus excite indignation should be a reason why you should place yourselves on your guard, lest the feelings of the moment should impel you to give undue weight to evidence which in cases of a different nature you would hardly think deserving of attention.

The intention constitutes the essence of this offense, the act of burning must be done willfully, maliciously, feloniously, and if the jury have any reasonable doubt of such felonious intent, the prisoner must be acquitted. Now, there are innumerable degrees of guilt between mere involuntary accident and the most deliberate and flagitious malice. It might in the present instance be the fact that the occupant of the stable adjoining that which is mentioned in the indictment had accidentally set fire to it, by means of the light which he was in the habit of carrying into it by night; it is also possible that it might be occasioned by persons carrying fire through the streets or, what is much more common, by means of lighted cigars carried through the streets, and even into the stable in question. If, then, there was direct and positive evidence that this very prisoner had occasioned the fire in any of these ways, still, unless he did it with a felonious intention, he is not to be pronounced guilty. There might be thoughtlessness and carelessness of the grossest nature, and which would deserve the severest animadversion, but the prisoner would not be answerable for it in the present prosecution. He must be found guilty of doing the act with the felonious intent or not guilty at all.

To convict him, therefore, of having perpetrated the act with such an intent, what evidence should the government lay before you? It is obvious that, in the first place, there must be sufficient evidence that the fire was feloniously kindled by some person, for, unless that is first established, then no crime has been committed; there is not what is called, in

the language of the law, a *corpus delicti*. The counsel for the prisoner must contend that there is a well-founded distinction between the common cases which are put in the books of murder and various other crimes committed on the person and an act of the present nature. In the former cases, marks of violence are found upon the body which has been murdered or maimed, but in the present there are no such decisive accompanying marks; the only fact which now appears is that certain buildings have been consumed by fire, but whether that fire was kindled by the malicious act of man or whether it happened by accident in some of the ways already mentioned does not distinctly appear. This, as the prisoner's counsel think, ought first to be shown, and this they contend to be the meaning of the rule that there should exist a legal *corpus delicti*—a rule which has been borrowed from the Roman law, and which must be understood by us in the sense in which it appears to be used in that law and in the laws of those nations who have adopted it.

What, then, is the evidence of the felonious act in the present case? It is admitted that it arises from the confessions made by the prisoner at various times.

In weighing this species of evidence, it is highly important to keep in mind a principle of law which constitutes the security of our most sacred rights in society. It is that confessions "must be voluntary, not obtained by improper influence, nor drawn from the prisoner by means of a threat or promise, for, however slight the promise or threat may have been, a confession so obtained can not be received in evidence on account of the uncertainty and doubt whether it was not made rather from a motive of fear or of interest than from a sense of guilt."

Such is the humane provision of our own laws and, indeed, of the laws of all nations, where the rights of the subject are at all regarded by the sovereign authority of the state. Now, it is obvious that the kind and degrees of compulsion or influence which may be exercised upon a prisoner may be extremely various. The highest degree is the rack or torture, which is employed in some countries, and from this point

there are indefinite degrees of restraint or influence, by means of imprisonment, threats more or less terrific, promises of reward and promises of pardon or indemnity, down to the mere well-intended persuasions and recommendations of busy bystanders who may happen to be present at the arrest of a criminal. Now, if it shall appear that the confessions of an accused person were made while under the influence of any cause of this kind, "however slight," as the law says, such confessions shall not be received to convict him.

Such is the language of the law when applied to persons of mature years—persons who have had experience in human affairs, who have had the means of knowing the laws of their country, who have been accustomed to weigh the consequences of the acts they commit, who, in short, have a full knowledge of their rights. With how much more force, then, does the rule of law apply to a youth of the tender age of the prisoner, who is so far from having a knowledge of all his rights that he is hardly conscious that he has any, who can not weigh the consequences of his acts, and who, if stimulated to a deed of the kind now charged upon him, would not be likely to reflect whether the place where the fire was to be kindled was in the midst of a populous town or among the more dispersed dwellings in our villages.

Another principle of law which may perhaps be applicable to this case is that the whole confession is to be taken together; if, therefore, a part of it shall go to his condemnation, but the whole of it together to his acquittal, the jury will be bound to acquit him.

The confessions in the present case are of two descriptions; those made after the arrest of the prisoner, which, it is contended, were made under an improper influence, and those which are said to have been previously made to two female witnesses, which, it is contended, are not proved, because those females appear by the evidence to be persons of infamous character and utterly unworthy of belief.

One of these abandoned women testifies to two different confessions, in the first of which she states that the prisoner,

while the fire was burning, spoke of it as kindled by some other person, and when she charged it upon him, he nodded his head, which she now pretends to have understood as assenting to what she said, but she states at the same time that she does not recollect that he used any expression in reply to her insinuation. The next time when she pretends to have had another confession from him was about sunrise the same morning, when he unequivocally declared to her that he had done it in the manner she has described. But this witness is not entitled to belief, especially in a case where the life of a party is at stake. For she appears by the undisputed evidence of reputable witnesses to have been a woman of loose and infamous character; and it appears by the records of the magistrate that she was sentenced to confinement as a woman of that description; in addition to all which, if anything further were wanting, several of the same witnesses positively swear that she has the character of not being a woman of truth. These facts alone would be sufficient to destroy all belief in her testimony, but there are still further reasons why she is not to be credited in her statements respecting this prisoner. She has strong motives of revenge, and she has threatened it against this youth and his family. It is in evidence that when the father of the prisoner discovered that the unfortunate boy had fallen into the hands of this dissolute woman and her polluted confederates, he endeavored to extricate his child; he expostulated with her, telling her (in his own simple, but affecting language) that she "would undo his son" upon which this woman, with the spirit of a fury, maliciously replied that she meant to undo him. The same threat was also made to another witness (Benj. Perkins) on another occasion. Further, she swears that the prisoner had the indiscretion to address a letter to her (while she and her companion, Sally Chase, were imprisoned in an adjoining apartment of the jail) in which he entreated her not to tell anybody what he had done, for it would undo him, or words to that effect. That the prisoner did request a paper of some kind to be handed in to the apartment of these women will not be contested, because it is sworn to by a witness who,

although the cousin of this woman, stands here unimpeached. But this witness does not know to which of the women the letter was addressed, nor does he state which of them received it from him; much less does he know anything of its contents. If, then, she ever did receive a letter containing any confessions relating to this transaction, why does she not produce it? How happens it that she only recollects a part of the letter—and such part as she probably supposes will condemn him? And why did she destroy the letter? You have a right, gentlemen, to infer that she destroyed it because she was conscious that the whole letter together would not have borne her out in the statement she now pretends to make of its contents. If we can for a moment imagine that this abandoned woman and her confederates had formed a conspiracy to ruin this youth, we shall then find motives sufficiently powerful to induce her to destroy this piece of evidence which might have recoiled upon herself. Of the same foul character is the evidence of her profligate companion, Sally Chase, who, in the same breath when she repeats the tale of the confession (to which Hannah Downes testified), tells us the highly improbable story that he intended to begin the conflagration of the town by setting fire to a building belonging to his own brother! It is unnecessary to dwell on evidence derived from such polluted sources. Lamentable, indeed, would it be that the life of even the most atrocious villain who was ever brought to the bar should hang upon the breath of such flagitious witnesses! Yet one of these very witnesses has the effrontery to tell you that her sense of duty impelled her to make the disclosure of the facts to the officers of the town. Her sense of duty! The sense of duty of a profligate wretch who has violated the most sacred duty of her sex in abandoning the marriage bed of her own husband for the haunts of prostitution!

But it is now necessary for you, gentlemen, to consider what weight is to be given to the subsequent confessions of the prisoner. Here, indeed, there is indisputable evidence that this inexperienced youth did make acknowledgements which, if made freely and voluntarily and under a conscious-

ness of his right, would tend to prove his guilt. But it is contended that they were not so made.

The first of these confessions was made in Newburyport, at the office of Mr. Woart, the magistrate before whom the examination was had. And under what circumstances was it made? It is apparent that it was under the influence of fear, and perhaps of the promise of security held out to him at the time of his seizure in Ipswich, when Mr. Wade, of that place (who took him), expressly promised him "that he would not hurt him" if he would go with him. From this moment the prisoner was not in a situation to make confessions with that perfect freedom which the law intends in such a case. Under the faith of this promise, therefore, he is carried to Newburyport without any legal process against him and delivered over to the magistrate at his office. In the agitation of the moment, the lad is shut up in the magistrate's office. The officers of the town are then sent for and, after shutting themselves up with the prisoner (the public being excluded by stationing a doorkeeper to prevent their entrance), the prisoner, without the countenance and support of his father or of any friend who could have apprised him of his rights, is interrogated. It is true, indeed, that the worthy magistrate and some of the respectable gentlemen then present inform us that the statute relating to this offense (sufficient in itself to appal a stouter heart than his) was read to him in due form; that he was carefully informed that he was not obliged to make any confession on the subject. But what effect would all this formal caution, this array of justice, be likely to have upon the mind of a youth arrested, as he was, under a promise of security, and then immediately shut up within the closed doors of the magistrate's office? Exactly what did happen; it only increased his terror, and the unwary youth (after having at first repeatedly denied the charge before the magistrate alone) was drawn into confession in the presence of the town officers, which a person of mature years would have avoided, and which this prisoner never would have made but under the influence of his fears. Besides, one of the selectmen of the town (James Prince, Esq.) candidly acknowl-

edges that during this preliminary examination he believes, when he first went into the office, he did say to the prisoner that he had better confess the truth.

In addition to all this, it was observed to the prisoner by the magistrate of some other person that they had obtained evidence of his guilt and that they had it "in black and white." Under the effect, therefore, of these circumstances of persuasion and terror constantly operating from the moment he was lulled into a fatal security by the declaration of Mr. Wade that he would not hurt him till the close of his examination before Justice Woart, he was at length brought to make the confessions mentioned by the witnesses. From this moment, then, the prisoner was no longer in that perfectly free and undisturbed state of mind in which he ought to be in order to render his confessions admissible in evidence against him.

His next confession took place at the jail, to which he had been sent by the magistrate for safe keeping while a complaint and warrant were preparing. Here again we are told that the same caution was given by the public officers present, the statute was again read and proceedings of the same kind with the last were again had. The prisoner was, however, at this time called upon to plead in legal form to a complaint regularly made, and he did accordingly answer in the first instance that he was not guilty. Why did not the magistrate immediately record this plea, hear the evidence in the case and, if he found probable cause, commit him for trial? Instead of this usual course of proceeding, he was asked what he meant by not guilty, to which he replied that he did not burn all the buildings (including one burnt on the preceding night); but upon being further questioned, he said that he did set fire to the barn in Charter street (mentioned in the indictment) but did not do it alone, upon which the magistrate, pushing his inquiries still further, observed to him that they understood what he meant. and repeated to him the usual question of guilty or not guilty, to which he answered that he was guilty. And this is the trial and plea of which the record is now produced by the government as evidence of the

guilt of this prisoner. By these remarks, however, it is not intended to intimate that the proceedings of the magistrate and town officers were dictated by improper motives, but they were evidently had under the extraordinary agitation of the moment, and, as we apprehend, were calculated to produce such an improper influence upon the mind of a young person as to render his confessions altogether inadmissible against him.

But his alleged confessions do not end here. A fortnight after his commitment, at the request of the jailor, he was visited by the Rev. Dr. Dana, accompanied by the witness (Mr. Sweetser) who has stated that Dr. D. conversed with the prisoner, alluded to his previous confessions and spoke to him of the enormity of his crime, and the prisoner once more made a confession of his having done it, but in company with another person (Joseph Lawrence). Dr. Dana expressed his commiseration for him and prayed with him. Here again we contend that acknowledgments thus obtained, however free they may be said to be, judging from the external deportment of the prisoner, must be considered as having been made under the full weight of that influence which would naturally be felt from the presence and conversation of a clergyman. We have no right to doubt that the visit was in this instance well intended, but we must, nevertheless, be permitted to remark, with all the respect we entertain for the party concerned, that a circumstance of this kind was calculated to excite a prejudice against the prisoner which might be followed by the most fatal consequences upon his trial. It does, indeed, seem to us like preparing the victim for the sacrifice before his fate has been decided by the judgment of the law.

Another confession, it is alleged, was made to one of the selectmen (Maj. Cross), who called to see the prisoner, at the request of that board of officers; and for the purpose, as it is said, of gaining information of the prisoner's accomplices. Here again the prisoner was regularly cautioned that he was not obliged to criminate himself, but was at the same time interrogated to know if he did set fire to the building; and, as might at this period be naturally expected, he again

acknowledged that he did it, but still in company with the person he had before mentioned (Lawrence). Of the same nature with this was his remaining confession, which was proved by another witness (Wm. B. Bannister, Esq.), who candidly states, at the same time, that he made many remarks to the prisoner upon the character and consequences of his crime, which, coming from a person of the witness' character and rank, must have had a powerful tendency to disconcert and intimidate an inexperienced youth.

Such, then, is the nature of all these confessions which are proved by credible witnesses to have been made by the prisoner at the bar, and it will appear from an examination of the circumstances attending them that the prisoner was under an ignorance of his right; that he was, from the time of his arrest, under the influence of fear and a promise of security for himself, on condition that he should confess the fact or give up the names of his supposed accomplices, which last was a constant subject of inquiry, and which he complied with by disclosing the name of Lawrence, as mentioned by the witnesses. Upon such confessions as these, and which are now testified to after the lapse of many months, we contend that a youth of his age ought not to be convicted.

But his defense does not rest here. He has produced witnesses of unexceptional characters to establish an alibi, to show that he could not have kindled the fire in question because he must, according to this testimony, have been in another place at the time when it is supposed to have been kindled. We are aware that the able counsel for the prosecution, who has had so many years' experience on the criminal side of this court, will be ready to treat this part of the prisoner's defense with feelings perhaps of contempt because an alibi is so often the only resource of artful and experienced offenders. But in the cases of that description the proof generally rests upon the testimony of profligate confederates, who are ready to commit perjury in order to screen a companion from the hands of justice. In the present case, however, the proof is of a very different character; the witnesses are unimpeached, and some of them are not even members of

the family of the prisoner. If their statements are to be believed, then it is proved that the prisoner was constantly in their company for the latter part of the afternoon and the whole evening of the day when the fire happened, or from four o'clock until about nine.

It is quite unnecessary to review minutely all the facts relating to this point, as they have been already stated in the opening of the defense, but it will be sufficient to remind you, gentlemen, in general terms, that a friend of the prisoner's family from another town (Jane P. Bray, of Gloucester) happened then to be at the father's on a visit; that on the afternoon of the day in question the family took tea about four o'clock, which was a little earlier than usual, and about five o'clock left the house together for the purpose of a walk through the town to show their young friend such objects as a stranger might naturally be desirous of seeing; that they pursued their walk at leisure to various distant parts of the town and called at two different houses of their acquaintance, at each of which they passed some time; this occupied them till half past eight o'clock, a point of time which is testified to by a witness who lives in another town (Gloucester) and who happened to be then on a visit in Newburyport, and also by another lady who joined them in their walk; they parted with this witness and arrived at their own home at a few minutes before nine, which time is proved, not only by the concurring testimony of all the persons who went out together, but also by a perfectly distinterested witness (Mrs. Peters) who lives in the same street with the prisoner's father, and who saw this party return from their walk at about ten minutes before 9 o'clock, which day and hour she is enabled to fix from the particular circumstances she has stated. During this whole period, the prisoner was in the company of the witnesses alluded to, and immediately after the nine o'clock bell had rung, it is proved that he retired to rest in the same bed with his father, with whom he was obliged to sleep for the purpose of affording accommodations in their humble dwelling for their female friend who was visiting them. And that he passed the whole of the night

in bed with his father till the fire broke out is indisputable from the evidence of the father, who was kept awake all night by the indisposition with which he was afflicted. Upon the whole of the evidence, therefore, on this point, it must be necessarily inferred that the prisoner was with his friends at the very time when the fire is alleged to have been kindled.

But it will be objected that there was an interval, about nine o'clock, when he might have committed the offense, for it appears by the evidence adduced on his behalf that after his return to the house he went into the back yard for five or ten minutes (no witness says more than ten). It is true that he was so absent, but, besides that, the yard in question was entirely enclosed with a fence of seven or eight feet high (a circumstance well known, though not expressly stated by the witnesses), it is apparent that this interval of time was far too small for the accomplishment of the crime, because the house of the prisoner's father was about half a mile from the fire, and it would have been impossible for the prisoner to have gone to the spot and there met his confederate, Lawrence, prepared the combustibles spoken of and then have returned home at nine o'clock, and that he did return at that time is proved by their neighbor, Mrs. Peters, who swears expressly that she had occasion to purchase some small articles at Mr. Clark's shop; that the bell was ringing for nine when she left her own door to cross the street towards the shop, and when she arrived there she saw the prisoner in a room adjoining the shop; and the same witnesses who speak of his being absent for the few minutes above mentioned are equally certain that he had returned from the back yard when Mrs. Peters arrived; this, then, was about the time of the bell ringing, and it is proved that a few minutes after nine he went to bed.

It may be objected further that there is a variance between the evidence of the females whom the prisoner accompanied and that of Mrs. Mace as to the time which was passed at the house of the latter. But if the times of the prisoner's going out and returning home are accurately fixed (as they are by the circumstances testified to), it is altogether immaterial

whether the intermediate periods of the visits and walk are so or not; the computation of that intermediate time is subject to some uncertainty, but this can not be the case with the beginning and termination of the walk, for the reasons given by the witnesses.

But if it should still be contended that the prisoner was at the place when the fire was kindled, the government have it in their power to prove it conclusively by means of Lawrence, who must have been there, and who could, without being obliged directly to criminate himself, swear that the prisoner was there. Why, then, is not Lawrence produced on the part of the prosecution and the guilt of the prisoner decisively established?

It is unnecessary, gentlemen, to ask your attention to the details of the evidence any further. But it may not be useless to make a few general reflections upon this extraordinary case. And one of the first which presses itself upon your minds will be what motives the prisoner had for perpetrating the crime alleged against him? It does not appear that he had any motives of revenge against any person living in the part of the town where the fire took place; nor can an adequate motive be discovered in any part of the testimony which is entitled to the least credit. If there is any truth in the confession attributed to him by the two principal witnesses (H. Downes and S. Chase), his motive must have been to take revenge upon his own brother, but the suspicion that he might have been actuated by this motive (to say nothing of the improbability of his being willing to sacrifice a brother) is wholly removed by the decisive fact that the fire was not kindled in the immediate vicinity of his brother's house. Can it be believed that this youth has been at once transformed to a demon and has committed a crime of such unexampled malignity from the mere cravings of a most unnatural appetite for cruelty? Under such extraordinary circumstances, then, gentlemen, cautiously inquire, in the first place, whether the fire in this case was maliciously and feloniously kindled by any man, and, if you should be satisfied on that point, then, with still more circumspection, examine the evidence of

the facts which are now combined together to fasten the crime upon this youth. And here you will not overlook the important consideration that the whole charge rests upon the confessions of the party accused. How many instances have there been, in all parts of the world, of confessions of murders and other atrocities which were never committed! What a striking example of this have we lately seen in a neighboring state of our own country!¹² Recollect the threats; weigh well the motives of some of the abandoned witnesses in this case to be the ruin of the prisoner. Let the human maxim of the law be deeply fixed in your minds that it is better that ten guilty persons should escape than that one innocent man should suffer. Reflect on the momentous consequences of your decision to this youth; suffer not yourselves to be influenced by any suspicions that may have been disseminated respecting any other part of his short life, but remember that he is now on trial for this offense alone. If this past has not been blameless, remember that it is so much the more difficult, but at the same time the more necessary for you to keep your minds free from prejudice against him in the present case. Do not suffer yourselves to be influenced by the circumstance that the people of this unfortunate town have, under the pardonable terror of the moment, entertained suspicions of his having before been guilty of similar offenses, recollect how ready we are to fasten upon one accused person the guilt of others, and that if the recent fire in that town had not (fortunately for the prisoner) taken place since he has been in confinement, he would be as likely to be the victim of suspicions in that as in former instances. Suffer not yourselves to be carried away by those strong emotions which must have seized upon the minds of the respectable witnesses from that desolated town. Above all, suffer not your horror of the crime to excite in your breasts a vindictive spirit against this youth because he happens to be the first unfortunate object whom the ardent, though not unjustifiable, zeal of a community has marked out as guilty of this atrocity—a zeal

¹² See Trial of the Boorns. *Ante*, p. 73.

whose influence is the more dangerous as the character of that community is the more distinguished.

THE SOLICITOR GENERAL, FOR THE COMMONWEALTH.

Mr. Davis. Gentlemen of the jury: The remaining duty which I have now to discharge is to sum up and remark upon the evidence which has been given you in this important trial and I shall endeavor to perform this duty with as little inconvenience to you as is consistent with the nature of the subject and the important issue of your deliberations. Although much time has necessarily been occupied in the progress of the trial, you will readily perceive that the path of your duty may be easily traced; the evidence appears to be of so clear and decided a character that I can not anticipate the existence of a doubt in your minds as to the guilt of the prisoner.

I have been somewhat surprised by several of the remarks of my learned friends who have preceded me on behalf of the prisoner. From these I should imagine that the prisoner was now before a tribunal where the spirit and principles of law and justice had rarely entered. He has been represented not only as an innocent, but a defenseless youth, now to be sacrificed to the vindictive persecution of his enemies; that their vengeance and your vengeance is about to be "recked upon him;" that his life is endangered more by his weakness than his crime; that all the witnesses against him are the interested parties to the prosecution, and that he has been made to furnish the evidence against himself, and to crown the whole, it has been stated that "he has no friend but the Court."

Is it possible that such language as this can benefit the prisoner in the highest judicial tribunal of Massachusetts? It is in this court and under the mild and just laws of this State that an innocent man would wish to be tried, in preference to all others. Here the guilty may have often escaped the punishment due to their crimes, but no innocent man was ever known to suffer before this tribunal. What better friends can an accused party wish for on his trial than upright and

learned Judges who, by the humane provisions of the law, are required to be of counsel for him in his defense? In the presence of this Court no man was ever sacrificed, no vengeance was ever recked upon the guiltless, no "defenseless boy" ever met with any other than the most humane and liberal treatment. Suggestions so extravagant as those made to you upon this subject by the prisoner's counsel are utterly inconsistent with the moral habits of this people, and the chaste and spotless character of our Judges and judicial establishments. These fears and cautions of my learned friends are therefore unnecessary and groundless.

In order to support this prosecution, two facts must be proved to your entire satisfaction: 1, That the crime described in the indictment has been committed, and 2, that it was committed by the prisoner at the bar.

With respect to the first of these, I shall trouble you with but few remarks. By the testimony of Mr. Fitz and Mr. Frothingham, the following facts are fully established. That the fire was first discovered between two and three o'clock in the morning of the 19th of August. This is full proof that the dwelling house of Mr. Frothingham was burnt in the night time.

The evidence that this burning was malicious and not accidental is now to be stated. The circumstance that the fire was not discovered till after two o'clock in the morning affords the strongest presumptive proof of this fact. From the testimony of Mr. Fitz, there can be no doubt but that the fire was set in Mrs. Cross' stable. It was first seen to burst out from the easterly side of that stable. It is in evidence that there was no hay or other combustible matter in it; it was unoccupied; no person is known to have entered it for several days. There had been no tempest, from the lightning of which the fire might have been kindled, no single possible circumstance from which it might be conceived that the fire originated from an innocent or accidental cause.

It has been suggested by counsel for the prisoner that the fire might have originated in the adjoining stable, belonging to Gilman. There is nothing in the evidence to support this

presumption, excepting the fact that Gilman was in the habit of going into his stable at all hours of the night with a lantern. If the fire originated in Gilman's stable from this cause, it must have been placed there either by design or accident. It could not be from design; there was no motive for this. Gilman had property in this stable, viz, seven tons of hay, three horses and two wagons, all of which were burnt. No man destroys his own property. But if Gilman possessed either this delirious fancy or wicked motive, it is proved by his brother that he was at home and in bed during the whole of the night of the fire. How could it be burnt by accident? If it were, the fire would not remain slowly kindling the whole night in a place filled with hay. But the fact that the fire was discovered in Mrs. Cross' stable and that it was thence communicated to Gilman's is decisive upon this point. Gentlemen, I shall not waste your time in further commenting upon the proof that the fire by which Mr. Frothingham's house was burnt originated in Mrs. Cross' stable and that it was placed there by the hand of an incendiary. The proof of the fact is too clear to require an additional observation.

I shall now enter upon the discussion of that part of the evidence which has been offered to prove to you that the prisoner is guilty of the crime charged upon him in the indictment.

You will naturally perceive, gentlemen, that a crime of this odious and atrocious character would be committed in secret. Unless, therefore, the incendiary should be providentially detected while in the act of committing it, the evidence against him must be either circumstantial or such as I have given you in the present case; that is, the voluntary confession of his guilt.

The ancient and well-established rules of law and evidence which have been urged in behalf of the prisoner will not be controverted in cases where they have a direct and fair application. But from many circumstances which have now appeared in evidence, the prisoner can not be entitled to the full benefit of them. The presumption of his innocence is much weakened by the profligacy of his habits and manners and the

apparent and unheard-of obduracy of his mind. His wanton and ferocious disposition for mischief, his diabolical spirit of revenge upon the slightest provocation unfortunately place him out of the sphere of all our legal and humane presumptions in favor of innocence.

Nor is his situation much changed for the better by his youth. It is manifest from the evidence that, though young in years, he is old in depravity. His understanding and intellect are unusually strong and clear and fit him for extensive and fatal mischiefs when abused and devoted to their accomplishment. It is to such a character, therefore, that the rules of evidence are now to be applied.

It is readily admitted that the great body and weight of evidence against the prisoner arises from his own confessions, and that without the aid of these he can not be convicted. But it is also contended that if you should find these confessions were perfectly free and voluntary, they constitute the best evidence which the law demands against the prisoner. The law relative to such confessions and the circumstances under which they are made so as to render them admissible is in this State perfectly well settled and understood. In this court, the decisions of English Judges have been considered so far rational and sound as to have been here adopted and applied. At the same time, it is believed that the construction of all the rules of law upon the subject in our own courts have been carried quite as far, and perhaps further, in favor of the accused party than they have been on the English bench. We shall not be much aided upon this subject by the remarks of some of the English and Irish jurists resorted to by the prisoner's counsel. Those of Mr. Justice Foster refer to cases of high treason and are entitled to the highest authority in cases where they are intended to apply, which are generally in cases originating in times of great turbulence in which the government may be considered in some sort to be arrayed against the prisoner. Those of McNally are of greater use in Ireland than in Massachusetts. All our feelings and prepossessions are in favor of the accused. Perhaps this may not be altogether the case in the courts and in the country whence these

opinions and the cases upon which they are founded originated.

The true doctrine upon this subject, so far as it applies to the present case, is contained in the following passages in Phillips' law of Evidence: "Since an admission is evidence against a party in civil suits, with much stronger reason is the voluntary confession of a prisoner evidence against him on a criminal prosecution, for it is not to be conceived that a man would be induced to make a free confession of guilt so contrary to the feelings and principles of human nature if the facts confessed were not true." "It seems to be now clearly established that a free and voluntary confession by a person accused of an offense, whether made before his apprehension or after, whether made on a judicial examination or after commitment, whether reduced into writing or not, in short, that any voluntary confession made by a prisoner to any person at any time or place is strong evidence against him, and, if satisfactorily proved, sufficient to convict him without any corroborating circumstances."

I will now apply the evidence of the prisoner's confession in this case to the rules and principles thus established. And you must understand, gentlemen, when you come to deliberate upon this evidence, that the true question will be: "Is there any reason to fear, or even suspect, that the prisoner has falsely accused himself?"

The evidence of the prisoner's confessions arises from six several and independent sources: 1st, his confessions to Hannah Downes and Sally Chase; 2d, to Mr. Justice Woart when first brought into his office; 3d, upon his examination by this magistrate immediately preceding his commitment for trial; 4th, to Maj. Cross and Capt. O'Brien between the time of his being delivered up to Justice Woart and his final examination; 5th, to the Rev. Dr. Dana, and 6th, to Mr. Banister.

His confessions to Hannah Downes and Sally Chase, you will recollect, gentlemen, must have been entirely voluntary; indeed, they were not only voluntary, but confidential, and made without the least solicitation on their part. If, there-

fore, the testimony of these two witnesses, or either of them, should be corroborated and credited, the prisoner must be pronounced guilty. I will briefly state their testimony. They swear that the communication to them from the prisoner was immediately after, or on the day of, the last fire—made on the spot and in substance as follows: That he procured a candle from his father's cellar, broke it by accident, took another instead of it; that he proceeded with it to the stable, having with him a cigar and matches; that he scraped together a small quantity of hay in the upper loft of the stable, placed the candle in it under the stairs, lighted the candle and left it burning; that this premeditated and horrid act was committed between 8 and 9 o'clock (or 7 or 8 o'clock) in the evening; that he hastened to his father's house, where he arrived about 9 o'clock; went immediately to bed with his father so that he might be able to prove where he was when the fire broke out.

These witnesses further state that while they and the prisoner were confined in prison, he sent in to Hannah Downes a letter containing a request that "for God's sake, she would not tell what he had done, for if she did, it would ruin him," and that he repeatedly called to her through the partition wall of his apartment during the night of their confinement, making the same request in nearly the same words; that this letter was destroyed, but was taken from the hand of the prisoner by young Stanwood and delivered by him into the apartment where these two witnesses were confined; that before this letter was destroyed it was read by them and by another person not now in court.

These witnesses, particularly Hannah Downes, further state that the prisoner told her of his intention to go into the State of Maine and stay a short time till the people become quieted; that then he would return by way of Boston, go to Newburyport in the night and set fire to the town in several places, so as that it could not be extinguished, and that if he was found out and sent to the State prison, he would have his revenge if he ever got out, if it were twenty years afterwards, together with other particulars not necessary now to restate,

but which discover in the prisoner a malignity of disposition nothing short of total depravity.

If this testimony is credited, gentlemen, you can have no doubt of the prisoner's guilt. I shall endeavor to establish it 1st, upon the ground that Hannah Downes has testified in a manner to entitle her to your belief, and 2d, that her testimony has been fully corroborated. As to the first, I beg you to recollect her decent and modest appearance and manner during the time she was passing the fiery ordeal of her examination. If she has sworn falsely, I should say that she was the most artful young woman I have ever seen in court in the character of a witness. Nothing could be more fair, simple and connected than her appearance and testimony throughout the whole of it. They carried with them such internal marks of integrity and truth that during a severe cross-examination she must have been detected if she had been false.

The attack upon the character of this girl has been violent and persevering. I am satisfied that she has been much abused by the witnesses for the prisoner; I shall presently look at their testimony and motives.

Permit me now to remark, gentlemen, that whatever may have been the character of Hannah Downes, she was the friend and intimate companion of the prisoner. She is, therefore, doubtless as good as he is—probably infinitely his superior in everything relating to her moral habits and feelings. From the above-mentioned fact, you can not expect from me evidence arising from the prisoner's conduct or confession from any other source than from his companions and friends—certainly not from the correct part of the community, for the prisoner has no friends or associates of that description—and it comes with an ill grace from him, and he ought not to be permitted to say that the testimony of this girl is not to be credited on account of her loose character when it appears that she has been his confidential friend and associate.

I must now be permitted to remark upon the various objections made to the credibility of Hannah Downes. The first attack is upon the ground that her reputation is that of a common prostitute. It is true that this court have decided

that evidence of this description is so far to be admitted as to affect the character, not the competency, of a witness. The correctness of this decision, though of recent date, is not to be questioned. The application of it to any particular witness is always open to the discretion of the jury. It was intended to be applied only to those wretches whose bodies and souls are but one mass of moral corruption and infamy—that there are such wretches in some of the large cities and towns in this and every other country is a fact not to be denied. It is for you to decide, gentlemen, whether Hannah Downes has been proved to be of the number of these wretches. I am confident you can have perceived no such evidence against her. Although she may have been incorrect in some instances, I believe she is entitled to as much credit as a witness in this court as some of those who have so furiously assailed her character.

I put out of the number of these the unhappy father of the prisoner. Whatever he may have said as a witness, both against the character of Hannah Downes and in favor of his son at the bar, may be the result of the strongest feelings of which the human heart is susceptible. He has from me all the feelings of compassion and pity which I am capable of expressing; they are equaled only by those of indignation for his son, who has brought him into this most agonizing situation. If there is any chosen curse, any hidden thunder in the stores of heaven, let it burst upon the wretch who disgraces his father and brings down his grey hairs with sorrow to the grave!

Several other witnesses have been produced against the character of Hannah Downes. I shall not bestow much pains upon them; they all appear to be her enemies; one of them, in particular (Robinson, I think), was absolutely infuriate; I could not obtain a decent answer from him.

The opinions of such people, enemies of the impeached witness, are of little weight; evidence of this nature should come from the purest and most unprejudiced minds, or it weighs nothing in a court of justice. The testimony, however, of one of the witnesses against Hannah Downes is worthy of your

notice. I mean that of Samuel Brookings. Mr. Brookings has lived in the vicinity and appears to be a candid, impartial witness; although he did not deny the incorrectness of some parts of her conduct, he would not impeach her character for veracity. I think, gentlemen, you will be justified in paying more regard to the testimony of this man than to all the others upon the same subject.

It is said that Hannah Downes had been sent to the house of correction as a person of immoral habits. I give you the following explanation of this fact: On the day of the fire, the prisoner was loudly called for; it was found that he had associated with Hannah Downes and others; they were immediately, and amidst the greatest excitement of the moment, without premeditation, and without much consideration, all sent off in a body. But in a few days after this excitement had subsided, they were discharged from the house of correction by order of the overseers of the poor, upon whose complaint they had been committed. If they had been as bad as has been represented, would they have been again let loose upon society at the request and by the municipal authority of the town? Certainly not. In addition to this, it appears that one of them has resided in the family of Mr. Wade as a domestic ever since and that her conduct has been unexceptionable.

Another objection against the testimony of Hannah Downes is that she did not disclose her knowledge of the prisoner's crimes when first examined under oath before Justice Woart. To this I answer that she was not then interrogated upon that subject, and that she undoubtedly believed, as many other respectable witnesses have done, that she was not bound to testify upon any subjects except such concerning which she was interrogated by the magistrate, and also that she was under a promise of secrecy to the prisoner, which promise she did not keep for a moment after she was led to believe that her obligations when under oath were paramount to those which she had pledged to the prisoner.

But the most satisfactory evidence in support of the testimony of Hannah Downes arises from the corroborations of it,

with respect to which you have the testimony of witnesses, and other facts which place her credibility upon the most substantial ground. The first that I shall name to you is:

The prisoner himself, when before Justice Woart, declared in the most voluntary and unequivocal manner "that nobody knew anything about the matter but Hannah Downes." This is of itself sufficient to substantiate her testimony.

She is also corroborated by the testimony of Wm. Stanwood, who verified her statement as to the delivery of the letter from the prisoner to her. This letter, you recollect, has been destroyed. It therefore can not be produced, but its contents may be proved by those who read it. It has been a subject of complaint or regret on the part of the prisoner's counsel that this letter is not produced. So far from this, if it contained anything of the kind sworn to by Hannah Downes and Sally Chase, it would have been sufficient alone to produce a conviction if it had been preserved. It is rather for me to regret the circumstance of its being destroyed. No answer or artifice would have prevailed against evidence in black and white in the handwriting of the prisoner.

The prisoner's return from Belfast by the way of Boston and his providential detection at Ipswich is perhaps the strongest corroborating circumstance in the testimony of Hannah Downes. She had testified before the magistrate concerning his threats to return and execute his horrid purpose, as before stated, while the prisoner was absent and when it was utterly impossible for her to know that he would put those threats in execution or that the circumstances of his return would correspond with and confirm her previous statements. If there is any validity at all in that kind of evidence which we call corroborative, the government is entitled to the full benefit of it in this instance.

Perhaps, however, you will think with me that if any link in the chain of this kind of evidence was wanting, it is supplied by the subsequent statements and confessions of the prisoner, voluntarily made to the magistrate, citizens and officers of the town, in all of which these statements and con-

fessions correspond most minutely with the testimony of Hannah Downes. Every material circumstance of her statement, the manner in which the two candles were obtained, the manner of setting and lighting one of them in the stable, the cigar and matches by means of which the mischief was completed, the time of the evening and the prisoner's return to his father's house, have been repeatedly, and with a full knowledge of his situation, stated and restated by the prisoner. Perhaps after this you will think it unnecessary to add that there ought not and can not exist a reasonable doubt of the truth of Hannah Downes' testimony.

I shall now proceed, gentlemen, to state to you the substance of the prisoner's other confessions. I would, however, in passing, simply remark that, notwithstanding the observations of the prisoner's counsel intended to convince you that he was in a state of duress when taken up and carried from Ipswich to Newburyport by Mr. Wade, and also during the time he was in Justice Woart's office before a new warrant was taken out against him, nothing is more clear or just than that these proceedings ought to be sanctioned as both necessary and correct. Every citizen of the commonwealth has a right to detain and deliver up to public justice any person charged with having committed a capital offense; every citizen is an officer of justice for this purpose and (unless this authority is abused) stands perfectly justified in so doing. In the present case, what was done by Mr. Wade was a just and necessary act, for which he is entitled to the thanks, instead of the censure, of the public.

I expect to satisfy you further that the proceedings at Justice Woart's office were not only free from blame, but that they were singularly correct and proper. The instant the prisoner was delivered to the custody of this magistrate he shut out all access to him from the crowd of people, old and young, which surrounded his office. This was not only a necessary precaution, but an act of kindness and justice to the prisoner. The insinuation, therefore, that he has been shut up and made to confess himself guilty is without the least foundation. After this, the first thing that was done was to

read the law to the prisoner and caution him not to accuse himself and to inform him that if he did so, his confessions would be given in evidence against him. What more could any man do for the benefit and information of the prisoner than this?

It has been argued that the confession of the prisoner made at this time ought not to be admitted in evidence because Mr. Prince, one of the selectmen, advised the prisoner to confess the truth. I do not justify this, but it was done in a moment of great excitement and without the least intention on the part of Mr. Prince to injure or entrap the prisoner. The answer, however, to this part of the argument of the prisoner's counsel is this: That this advice or request of Mr. Prince had no influence on the mind of the prisoner and that no confession was made in consequence of it; on the contrary, when this advice was given, he made no other answer to it than boldly and insolently to deny that he had been in the stable at all.

You doubtless recollect, gentlemen, the subsequent transactions at Justice Woart's office; after an obstinate denial of all knowledge of the crime imputed to the prisoner, he was interrogated in another form and was asked: "How do you think we know that you procured a candle," etc? "How do you think we know that you lighted this candle and placed it under the stairs in the stable?" Such was the effect of this mode of questioning him that it produced the effect, and either from remorse or conscious guilt, "he instantly proclaimed his malefactions" and then declared, "If you will tell me who told you this, I will tell you all about it." And when he was informed from whom the knowledge of his guilt was obtained, he voluntarily, and in compliance with his own engagement to disclose, and not from any previous inducements held out to him, declared, "I have done it" and immediately afterwards stated all the particulars of the transaction.

You will now recollect, gentlemen, that the prisoner was thereupon committed for further examination; that in the afternoon of the same day a complaint was made charging him, among other things, with this identical crime, and that

after an explanation of this complaint by the justice, the prisoner pleaded guilty to it, the record of which I have produced to you in evidence. It is also to be recollected that before this last examination took place, the prisoner was again humanely cautioned not to accuse himself falsely and again informed that whatever he did confess would be given in evidence against him. Enough has been said upon this part of the evidence.

The prisoner's other confession to Maj. Cross and Capt. O'Brien was equally voluntary and obtained under similar humane cautions on the part of these respectable gentlemen, and this examination took place about one o'clock of the day. The prisoner was informed that they came to examine him at the request of the selectmen; that he was not bound to confess anything unless he was perfectly willing so to do, and after all this he proceeded to confirm the same statement which he had just before made at the office of the magistrate.

The prisoner's subsequent confessions to the Rev. Dr. Dana and Mr. Bannister are entitled to your particular consideration. I shall consider them both together, as the solemn manner in which they were both obtained is nearly the same.

It can not be imagined for an instant that the motives of both these gentlemen in calling to see the prisoner were not perfectly pure and friendly. The high character of both entitle them to this belief; you have, therefore, from the testimony of these highly respectable men evidence of as conclusive and unquestionable a character as can ever be obtained under any circumstances from the confession of the accused party.

The confession to Dr. Dana was clear and explicit, viz, that he had confessed his guilt before, and also that he was in fact guilty of the crime. The solemn manner under which this confession was made and the consequent appeal to the throne of grace by this holy man for mercy on behalf of the prisoner sanctions and, as it were, sanctifies this transaction.

The circumstances under which the prisoner's confession was made to Mr. Bannister are equally solemn and affecting.

The legal and religious advice given to the prisoner by this gentleman on this occasion does him the greatest honor and sanctions in the highest degree the evidence obtained in consequence of it, and as this confession and the statement in consequence of it corresponds with all the others before made by the prisoner, it can not be necessary for me further to comment upon it. I will only say, in closing these remarks on the whole testimony on the part of the Commonwealth, if the evidence of a confession obtained under every circumstance to show that it was entirely free and voluntary, that it was made after repeated cautions and with a full knowledge of the consequences and under circumstances peculiarly solemn and affecting; if, after all this, the prisoner can not be convicted, all the wise, necessary and human provisions of the law must be disregarded and abrogated. I trust, gentlemen, you are not prepared to take the responsibility of finding your verdict upon such principles.

I shall now proceed to consider the evidence of the only defense set up by the prisoner upon which he can place the least reliance. This is what the law calls an "alibi," the meaning of which is that when the crime was committed, he was somewhere else. The gentlemen who have preceded me have anticipated too strongly my contempt for such a defense. When well proved, it is the best defense; when defectively proved, it is the weakest and most dangerous to the prisoner, and it has been often denominated a stale defense.

The testimony of the prisoner's father upon this point does not alter the state of the case. He only knows that his son came home about nine o'clock, of the evening of the fire, and remained in bed with him till the fire broke out; this is consistent with all the evidence relied upon by the government.

The testimony of the prisoner's sisters requires a particular examination. I regret to be obliged to say that this evidence is so inconsistent, that even if it were not contradicted, it could not be supported. They have the strongest inducements and prepossessions in favor of their brother, and would save him from the ignominy and death which threatens him, if in their power. I do not impeach their credibility;

their recollection is too imperfect, and their statements too absurd, to entitle them to your belief.

Their testimony (in which they are corroborated by their cousin from Gloucester) in general, is, that they with the prisoner took their tea at their father's house about four o'clock; that between four and five o'clock, they went to walk with their cousin; stopped at Mrs. Mace's a quarter of an hour; left that place at half past five o'clock, proceeded to High street, to Dexter's, where they made no stop longer than to view the images; went thence by the way of Boardman street to Mrs. Hoyt's, which is at the extreme northeasterly end of the town; left Mrs. Hoyt's at half past eight o'clock, and reached their father's house about nine o'clock; that after their return thither, the prisoner went out the back door, and was absent five or ten minutes; and that, excepting in this instance, the prisoner was not out of their sight for the whole of this time!

A very few remarks will discover the discrepancies of this statement. Mary Clark says they left home about five o'clock, and went without stopping to Mrs. Mace's, stayed there a quarter of an hour, and left there at half past five o'clock. Mrs. Mace testifies that when this party left her house it was half or three quarters of an hour after sunset. According to Mrs. Mace, therefore, these young people must have spent two hours in going a quarter of a mile, and staying a quarter of an hour! This is incredible. Further, according to the story of the sisters, they must have occupied a longer time in going a quarter of a mile, and staying a quarter of an hour, than they did in going from Mrs. Mace's to view the images at Dexter's, and returning to Mrs. Hoyt's, which altogether is a distance of nearly two miles! This is wholly improbable!

These mis-recollections and incorrect statements may enable you, gentlemen, to reconcile the testimony of these witnesses with the other facts in the case. Nothing is more uncertain or unsatisfactory than the recollection of witnesses as to the passing of time, and the number of minutes within which a transaction took place, unless they have some particular reason at the time to charge their memories with it. Now you

have only to imagine, that the recollection of these witnesses is as imperfect as to the time he was absent (after his return with them from Mrs. Hoyt's) as it unquestionably has been as to the other parts of their testimony, and sufficient time will be found for the prisoner to have gone to the stable, and committed the crime. I leave you to judge for yourselves, whether it is not perfectly reasonable and safe for you to adopt this construction of the evidence. But where is Mrs. Hoyt? Why is she not here to confirm this statement, so important to the life of the prisoner?

Before I state the evidence which destroys this defense of the prisoner, let me remark, that this testimony of the sisters was never heard of till within a few days. Is it possible that they should not have disclosed it before; particularly at the examination of the prisoner? It might have prevented his confinement; at any rate, it would have suspended the public opinion, which from the beginning has been decidedly against him. It is also to be recollected, that this defense contradicts all the confessions and statements of the prisoner himself, so repeatedly and solemnly made, in the manner before stated.

But, gentlemen, the two witnesses produced this morning destroy at a breath the baseless fabric of this defense. Mr. Sweet tells you that the prisoner came into his shop between candle lighting and 10 o'clock on the evening preceding the fire, asked leave to light a cigar, obtained it, and went out apparently in haste. Smith also states that he saw the prisoner at 5 o'clock in the afternoon, idly leaning against a fence in Marlborough street. Both of these statements are utterly inconsistent with the testimony of the prisoner's sisters. Mr. Sweet and Mr. Smith are both men of unblemished characters, and of course entitled to the fullest credit.

Gentlemen of the jury, I have now gone through the evidence in this arduous and important trial. I am conscious of no remissness of duty. I think I have proved the prisoner guilty, and I leave him in your hands. His counsel have made a strong appeal to your feelings for mercy. Mercy to the prisoner is death to the devoted inhabitants of the town, where this scene of desolation has taken place. If you have any

mercy to dispense, I ask it in behalf of the parents and children, the wives and husbands, of this peaceful and moral community. Let them in future repose in their beds, without the most dreadful and appalling of all fears, that they shall wake amidst the conflagrations and cries of death, with which they have been so often affected, by the visitations of an inscrutable Providence. Do not lightly, and from motives of weakness, or fears of discharging your duty with fidelity and fortitude, take this tremendous responsibility upon yourselves. Indeed, such has been the issue of this trial, that I have no apprehensions of this nature. I ask of you, for the government, nothing but justice; and I cannot believe for a moment, that a jury of this county can be persuaded to deny it, contrary to the plainest dictates of reason and conscience.

THE CHIEF JUSTICE'S CHARGE.

PARKER, C. J. Gentlemen of the Jury: The prisoner at the bar stands charged by the Grand Jury with having, on the 17th of August last, about two o'clock in the night time, set fire to the barn of Phebe Cross, of Newburyport, whereby the dwelling house of Andrew Frothingham, Esq., was then burnt. It appears, that there is a mistake as to the day; but this is immaterial, provided you are satisfied that the offense was in fact committed before the finding of the bill.

By a law of this Commonwealth, the facts necessary to constitute the crime of arson are the wilful and malicious burning of the dwelling house of another in the night time, or the setting fire to any other building in the night time, by means of which the dwelling house of another is burnt. Perhaps no one will doubt, that if ever the punishment of death should be inflicted, it should be for an offense of this kind. No crime can be conceived more dangerous in its consequences, or indicating greater malice. In the case of a single murder, the consequences terminate in itself. The life of one person is destroyed, but the rest of the community suffer no direct injury. But in the setting fire to a dwelling house during the defenseless hours of the night, and especially in a populous

town, there is not only danger of vast destruction of property, but of the loss of multitudes of lives; and the peace and security of the whole community is at risk. If ever it is right for the Government to take the life of a subject, it is in such a case.

I make these remarks, because, if you are satisfied, upon mature deliberation, that the defendant is guilty of the offense charged upon him, it will then be your duty to convict him, and not to hesitate from any scruples as to the propriety of the law, or from a persuasion that you would not have sanctioned it, had you been in the Legislature. Even if this were your opinion, it would be wrong to be influenced by it; for it would go to the destruction of society, if individuals, when duly called upon to execute the laws, should decline acting because they considered them too severe, or entertained doubts of the right of society to punish any crime with death.

Still, however, we should consider that in a case where the consequences are so tremendous, it is the duty of all to proceed with extreme caution. The mind should be left open to consider every circumstance in favor of the accused. But your judgment must be kept calm and collected; and, if after all, you cannot be of opinion that the testimony will authorize you to acquit the prisoner, you must return your verdict of guilty and leave him to the due course of law.

It is incumbent upon the Government, in the first place, to show that the dwelling house of Mr. Frothingham was burnt in the night time, in the manner set forth in the indictment. Upon this point you will probably have no doubt. But a question may arise, whether there are not circumstances to induce a reasonable doubt, if the burning was occasioned by an incendiary. It is suggested by the prisoner's counsel that it might have been accidental. But in all examinations we are not to look to extreme cases, or slight probabilities. We are to consider what are the common and ordinary occurrences of life, and to draw our presumptions from that source.

In this case, the first was first seen at two o'clock at night, bursting forth from a stable. There is no evidence that any

one had been in the stable at a late hour on the evening previous. Without anything further, then, is there not a strong presumption that it was the work of an incendiary?

To prove the guilt of the prisoner, the government rely principally, if not wholly, upon his confessions. His counsel, in their anxious but laudable zeal, have made some observations upon the nature of confessions, which require a few remarks. Though it be true that evidence of confessions is to be received with great caution, yet, when well and satisfactorily proved, they are the best species of evidence, better than the direct testimony of one who should testify that he saw the party accused set a lighted torch to the building. In the latter case, doubts may arise as to the identity of the person, or the intention with which he did the act, and of the veracity of the witness. But in the case of a voluntary confession by one of sufficient intelligence to know the nature and consequences of his crime, no such doubt can exist. If, upon considering all the circumstances, you are fully satisfied that the confessions were freely made, and that the prisoner was in the possession of his faculties, you must convict him, unless from the defense set up, the effect of this evidence should be destroyed. It will not do in such case for courts or juries to stop at possibilities. Doubts may be raised in all the concerns of life, and we should never perform any duty, if we were to wait till every possible doubt was removed. It is not to be presumed that a person possessing apparently common intelligence, and uninfluenced by threats or promises, would confess himself guilty of an offense which would subject himself to restraint of liberty or loss of life, unless he were really guilty. Such a case may possibly occur once in an age, but such rare occurrences are not to destroy the general rule.

The first confession relied upon by the Government is sworn to by Hannah Downes and Sally Chase. Their testimony you will recollect. The counsel for the prisoner, to invalidate it, have given evidence of their being women of abandoned characters. The Court have heretofore decided that evidence showing that a female witness is a common prostitute may be

submitted to the jury, to affect her credibility; that such women are indeed competent witnesses, but having set at defiance all the laws of decency, and whatever renders the female character respectable, the jury may presume that they have no regard to the sanctions of an oath, and therefore may reject their testimony. You will consider the evidence introduced to discredit these witnesses, and if you shall be of opinion that they belong to that abandoned class of women, you may lay their evidence out of the case, unless corroborated by other circumstances.

The testimony next to be considered is that of Mr. Wade. He arrested the prisoner when passing through Ipswich, after having decoyed him into his house. The circumstances of his appearing in Ipswich at this time, and upon the road to Newburyport, you will consider, so far as it tends to corroborate the testimony of the women as to his intention of returning.

His counsel, in remarking upon Mr. Wade's testimony, spoke of his taking the prisoner and carrying him to Newburyport without a warrant. Upon this subject, we think it proper to observe, that it is not only the right but the duty of every citizen to arrest any one who is reasonably suspected of so high a crime. He is justified even in decoying him, and may, without a warrant, carry him before a magistrate. He acts indeed at his peril, and he will be held to pay damages to the party injured, unless he had reasonable cause for making the arrest. The circumstances of the prisoner's being carried to Mr. Woart's office, and of his conduct and confessions when there, are next to be considered.

His counsel contend that the confessions which he then made, as well as those subsequent, were obtained from him by undue means, or when under duress.

It is a principle of our Constitution, well understood by all classes of citizens, that no person can be condemned without a trial, and that he is not bound to convict himself. It is not therefore to be presumed, that when a person confesses a crime charged against him, he does it from an apprehension

that he is compelled to confess. It does not appear that the prisoner made the confession at Mr. Woart's office in consequence of any threats or promises. Mr. Prince told him indeed that it would be better for him to confess, but he after this persisted in denying that he was guilty. It was not till he had been informed that he was betrayed, that he made the confession. You will, however, take the whole evidence into consideration, and if you believe that he was under terror in consequence of the array of authority against him, or from any other cause, and that he was thereby induced to make the confession, you will not conceive it as sufficient to justify a verdict against the prisoner, of itself.

The Court deliberated upon this part of the cause, when the evidence was offered, and were not satisfied that the confession was unduly obtained. Had we been so satisfied, we should have rejected it as incompetent. We therefore suffered it to be submitted to you, for you to give it the weight you think it deserves—it being the province of the jury alone to determine the effect of evidence.

It is proper here to remark that perhaps all the subsequent confessions are to be placed on the same footing with the last considered—for after making one confession he would be naturally under an apprehension that he must persist in what he had said. And if there was an undue influence at the beginning, that it would be likely to continue.

I have been considering the confessions made to Mr. Woart and others, as independent of those made to the women. But if you believe that the confession made to Mr. Woart was made under circumstances, as that by itself you might not be willing to consider it conclusive evidence, you will consider how far it is corroborated by, and corroborates, that sworn to by Hannah Downes. So if you have doubts as to her credibility, yet you will consider how far she is confirmed in the minute relation of the manner in which the fire was communicated, by the prisoner's having related precisely the same circumstances to Mr. Woart and the other witnesses. You may believe her statement to be correct, though she herself is not entitled to full credit on account of her char-

acter, if what she testify is sufficiently supported by other evidence.

If the evidence against the prisoner, before considered, is so strong, as that you cannot resist the conclusion that he is guilty, you will then look to the other part of the defense.

The prisoner's counsel have attempted to prove what is called an *alibi*. If this is proved to your satisfaction, you must acquit him, however, nice and accurate the previous chain of testimony against him may appear. An *alibi*, if well made out, is the best evidence of innocence. But considering that it depends generally on a nice calculation of time, it is in practice often found to be the weakest species of evidence. The witnesses for the prisoner may honestly err as to the precise point of time that he was with them. The sisters say that they returned home with him about five or ten minutes before nine. Had it been twenty or thirty minutes, there would have been a sufficient interval before nine for him to have accomplished the crime with which he is charged. Their testimony is also irreconcilable with that of several witnesses on the part of the Government—but particularly that of Sweet, as to the time of his coming into his shop to light a cigar.

Gentlemen, I trust that you will proceed to the examination of this important cause, with candid minds, and will come to a conclusion in favor of the prisoner, if you can consistently with the rules of law and the evidence which has been exhibited. But if you cannot, you know your duty to the Government, and you will not shrink from your responsibility. Addresses are often made by the counsel for prisoners in capital trials, to the feelings of the jury. But it is the duty of jurors to exercise their judgment, without being influenced by motives of compassion. They are frequently reminded of the exceeding delicacy of their situation, and called upon to consider the awful consequences of their verdict. But their situation is not more difficult and distressing than that of other officers of justice, who are obliged to take a part in such anxious inquiries. No man is fit for such an important station, who has not strength of mind to resist his natural emotions, when they come in competition with the dictates of

his judgment. We are all sworn to do our duty, and we cannot substitute for that the feelings of humanity, without violating our oaths, and breaking up the foundations of society.

A juror is placed in a post of importance. He is not only to protect those who are unjustly accused, but he must defend the laws. A soldier who is placed to guard a public treasure would be thought unworthy of his station should he yield to the entreaties of the poor and destitute who should solicit of him the smallest part of what his duty bound him to secure. He might weep over their distresses, but he must deny their petitions. It is in like manner incumbent upon you, if you cannot acquit the prisoner consistently with your oaths, to suppress the feelings of the man, and do the duty of the citizen.

You will weigh the arguments of the counsel for the prisoner with great attention and circumspection, and if anything said by them, founded upon the evidence, should excite in you a reasonable doubt as to his guilt, it will be your duty to acquit him. But if, after all, no such doubt remains, you must say that he is guilty. The accused is young; but his youth alone is not to excuse him. Led into bad courses, the natural termination of which is crime, if he escape because he is young, then the young will be released from one of the strongest restraints from vice, the fear of punishment.

If, after deliberating well upon the evidence, your judgments are satisfied that the prisoner is guilty, your verdict will pronounce him so, notwithstanding the possibility that, after all, he may be innocent.

It is no reproach to a jury, nor is it any cause for troubling their consciences, that one whom they have convicted is afterwards discovered to be innocent, provided they make the best use of their faculties, and exercise the whole power of their mind in relation to the evidence. Extraordinary instances of the fallibility of human means of discovering the truth sometimes appear. They should be regarded as warnings to proceed cautiously, but not as grounds for rejecting all belief in evidence. Jurors who have faithfully discharged their duty may repose their heads upon their pillows with

a quiet conscience, whatever may appear afterwards to render doubtful their decisions.

The cause is now submitted to you—you will discharge your duty like faithful citizens, by acquitting, if you can conscientiously, otherwise by convicting the prisoner.

THE VERDICT.

The case was committed to the *Jury* at half past four in the afternoon and at nine in the evening they returned into court with a verdict of *Guilty*.

THE SENTENCE.

February 17.

The *Prisoner* was brought into court and put at the bar.

The *Solicitor General*. May it please your Honors, Stephen Merrill Clark, the prisoner at the bar, has been indicted by the Grand Jury of the body of this County of Essex, for the crime of arson. To this indictment he has pleaded that he is not guilty—able and learned counsel have been assigned, to assist him in his defense—an upright and impartial jury, almost wholly of his own selection, have been impanelled and sworn to decide the cause between the Commonwealth and the prisoner—who, after a patient hearing of the evidence, have pronounced a verdict that he is guilty. In the progress of this trial, the prisoner has received all the aid, and been indulged with all the privileges, which, as a citizen of this Commonwealth, he is entitled to claim. By a statute of the Commonwealth, this dangerous and detestable crime is punished with death. I do, therefore, on behalf of the Commonwealth of Massachusetts, move this Honorable Court, that sentence of death be now passed on the prisoner at the bar.

The CHIEF JUSTICE asked the prisoner if he had any reason to assign why the Court should not proceed to pass sentence upon him.

The *Prisoner* said that he had no other reason than that he was innocent of the offense with which he was charged.

The CHIEF JUSTICE. Stephen M. Clark: The most solemn and distressing of all duties is now devolved upon the Court, that of awarding against you the sentence of the law, for the crime, of which, after a full and fair trial, you have been legally convicted.

The sympathy felt by all towards your aged parents and

your sisters, and all others who may be interested in your welfare, would, if it were possible, have saved you from the dreadful doom which awaits you; but the proofs of guilt were too strong to allow the most compassionate heart an avenue for doubt. By your own confessions, free and voluntary, not, I fear, in penitence, but with an obdurate indifference to the consequences of your crime, and at times with an apparent exultation at the destruction it produced, you seem to have invoked the vengeance of the law upon your head, and prepared the community to see with melancholy acquiescence, young as you are, the always terrible execution of the last power of the law.

Frequent as may have been incendiary attempts, and successful as they sometimes have undoubtedly been, hitherto they have been veiled in darkness, and the cruel perpetrators have been suffered, by a wise but inscrutable Providence, to escape detection and punishment. But the wicked shall not go unpunished; and when the infirmity of human tribunals shall be superceded by the perfect justice of Heaven, these deadly sins will assuredly meet their just retribution.

How hard must be that heart! how desperate, how worse than savage, which can deliberately meditate a midnight conflagration, preparing with steady hand the materials of mischief, regardless, if not contemplating with delight, the terror, the cries, the slow and painful death, of the aged, the sick, the tender infants, multitudes of whom are exposed by the ferocious incendiary to the most dreadful of all tortures, but that of guilt!

And if it be possible to imagine a still more diabolical spirit, it is his, who, beholding the ruins which he has caused, ignorant of the extent of the desolation, and uncertain whether the destruction of human lives has not accumulated horror upon the scene, can exult at the wretchedness he has produced, and, in the triumph of successful villainy, anticipate future schemes of more extensive destruction.

If there be a wretch, who, more than others, deserves the appellation of "enemy of the human race," it is he who is thus described. Murder, robbery, piracy, fall, in the black

catalogue of crimes, below the crime of arson. They have determinate objects, are limited in extent, and incited by passions which may be considered human. This is boundless in its consequences; property is the least of its expected victims; the malice of a demon, unassisted by cupidity, by particular revenge, or by any of the frail passions which usually lead to crime, is its sole instigator.

It is then the right, nay, the duty of society, to cut off from the earth, by ignominious death, him who would involve his fellow creatures in such indiscriminate destruction.

Young man! it is you, whose sad picture has thus been exhibited. The verdict of the jury, the evidence on which it is founded, warrant us in believing that it is not exaggerated. How then do you stand! Just at the threshold of life, in full health and vigor, with powers of mind and body fit for a long season of useful and active exertions, born and educated in a town, where you have undoubtedly received all the advantages of early education, of paternal advice, of religious instruction, of good example; yet, in despite of all these allurements to virtue, brought by a gradual but sure progress from idleness to vice, from vice to crime, till at last, contrary to the course of nature, your life is cut off, and you leave your aged parents to lament its short history even more than its dreadful termination. You perhaps believed that the arm of the law was too short to reach you; but it now has you in its power.

You probably have never thought, though you must have been taught, that the eye of Heaven would penetrate the darkness in which your crime was prepared, and the heart in which it was conceived; but you are shortly to appear before the eye which seeth all things even in darkness, and which knoweth the secrets of all hearts. What then is to be the business of the little remnant of your short and wicked life? Repentance—contrition—humbleness of heart—devout and earnest supplications for mercy—a broken spirit: These alone can stand you in stead, in the day of bitter sorrow, the fruit of your own wickedness: These alone can give you hope of avoiding that dreadful judgment to come, to which

the sentence of this human tribunal, will otherwise be but a passport.

Alas! that a youth of seventeen should be the subject of these painful remarks. Cruel they may seem, but they are not intended in cruelty—they are meant to melt, if it be possible, a heart which seems hitherto to have been a heart of stone, that it may receive the kindly seeds of religious consolation, which, whenever an avenue shall be opened, will be joyfully poured into it, by the ministers of the everlasting Gospel, who will, it is hoped, lead you into the way of salvation, notwithstanding the barriers which your crimes have established against it.

What a sad example you present to the youth of our country! Leaving, at an early age, the protection and necessary discipline of your parents, for the company of strange women—forsaking an honest employment, for the vices and temptations of idleness—despising the reproofs and the distress of your aged father, whose gray hairs are now visited by the worst of sorrows—and at last listening to the tremendous voice of insulted law and justice!

May the youth who are present, and those who shall hear of your untimely fate, take warning from so affecting an example! May they avoid temptation in the beginning! May they have the fear of God continually before their eyes! sensible that to despise his word, to turn a deaf ear to instruction, and to flee from the wholesome discipline of a parent's house, will soon or late end in bitter sorrow, if not in awful judgment.

It remains only for us to declare the sentence of the law, which is that you be carried hence to the prison, from whence you were taken, from thence to the place of execution, where you shall be hanged by the neck until you are dead! And may God of his infinite goodness, through the merits of the Savior, have mercy upon your soul!

THE CONFESSION.

During the interval between his sentence and execution (which latter was appointed to take place on the 26th day of April) a

strenuous effort was made to procure the commutation of his punishment from death to perpetual imprisonment. A petition, signed by many of the most respectable people in the county, and another by the jury who convicted him, were presented to the Executive. After investigating the facts and weighing the arguments of zealous and able advocates, the Governor and Council were unanimous in the decision, that there was no sufficient cause to interrupt the course of justice. Believing, however, from the apparent unconcern of the prisoner, that he had indulged in a false confidence of pardon, he was respited to the 10th day of May, with the assurance that the sentence would then be executed.

On the day before his execution, Stephen having expressed a desire to make a complete confession, a number of questions were prepared, which were read to him and to which he made answer in the presence of four or five witnesses. They were as follows:

What first induced you to set fire to the town of Newburyport? I was associated with Hannah Downes. The people of the town talked about our being together, which greatly offended her, and led her to propose setting fire to the town, as a matter of revenge. She proposed that I should do it, and urged me to commit the act.

Did you ever make any objections to this proposition? I did at first. I told her I did not wish to injure the town and cared nothing about taking revenge for what was said. At length I became accessory to her views and feel greatly criminal for having complied with them. Did she often speak to you on the subject of setting fire to the town? She did. Do you now, in view of the account which you must soon give up to God, feel that you can say with truth that the first idea you ever had of setting fire to the town was suggested to you by the person whom you named? Yes, I do feel so. Had you ever any accomplice except Hannah Downes? No, I never had any. Did you ever think of setting fire to the town till your acquaintance with her? I never did.

Was Joseph Lawrence an accomplice with you at either fire. No.

Did Hannah Downes ever propose to you to set fire to any particular place? I do not remember that she did. She said she wished certain persons¹³ might be burnt out.

Were the places which you did ultimately fix upon of your own choosing? Yes.

Did Hannah Downes ever say anything to dissuade you from setting fire to the town, telling you that you would go to State prison for it? The morning after the fire, as I was walking with her alone, and talking about it, she told me not to talk so loud, for if I should be heard, and it was proved against me, I should be sent to State prison.

Did you ever say to Hannah Downes that you intended to go to the

¹³ Among whom was a Mrs. Stickney.

Eastward, return by way of Boston, and set fire to the town in three or four places at once? I never did.

How did you communicate the first fire? I took a piece of cloth about two feet long, and prepared it with rum and brimstone and put it in some hay.

How did you communicate the second fire? I took a candle from my father's cellar in the early part of the evening, and a match from the shop; I lighted a cigar at the fire in the kitchen, went out unobserved; lighted the candle from the match, and placed it under a pair of stairs in the second story.

Have you any hard thoughts or feelings towards the Judges and jury who condemned you, or the Governor and Council who have refused to commute your punishment? None at all.

You are now on the brink of the eternal world, and must soon give up your account to the Judge of Quick and Dead, who knows your heart. Is the confession you have now made true according to the best of your knowledge and recollection? It is.

Do you make it freely, of your own accord, begging for the forgiveness of God and man? I do.

May 10.

THE EXECUTION.

Today at noon the prisoner was taken from the jail in a carriage. He was seated between Rev. Thomas Carlile and Rev. Elias Cornelius, and opposite to the prison-keeper, whom he thanked in affecting terms for his kindness. He did not regain his composure for some minutes, after the procession started. The press of the crowd often caused some noise around the carriage; but his attention was slightly drawn to it. He seemed to be engaged in prayer, and was collected and composed, nearly all the way. He had often expressed anxiety about his body, and once on his way, he said to the clergymen, "You will take care of my body, won't you?" On arriving at the place of the execution, he repeated the exclamation made when entering the carriage, "God have mercy on my soul," as he was supported to the scaffold by the clergymen. While the Sheriff read the warrant for his execution, he leaned his head upon one near him and was much affected. The Rev. Mr. Cornelius then read the following address, which Clark had composed for the purpose:

"May the youth who are present take warning by my sad fate, not to forsake the wholesome discipline of a parent's house. Had

I took the advice of my parents I never should have come to this untimely end; and I hope my end will be a warning to you all that are now present. May you all pray to God to give you timely repentance, open your eyes, enlighten your understandings, that you may shun the paths of vice, and follow God's commandments all the rest of your days. And may God have mercy on you all. To the world at large I bid farewell!"

The Rev. Mr. Carlile then offered up the following prayer from the church service.

"O Almighty God, with whom do live the spirits of just men made perfect, after they are delivered from their earthly prisons, we humbly commend the soul of this thy servant, our dear brother, into thy hands as into the hands of a faithful Creator, and most merciful Savior; most humbly beseeching Thee, that it may be precious in thy sight. Wash it, we pray Thee, in the blood of that immaculate Lamb that was slain to take away the sins of the world; that whatsoever defilements it may have contracted in the midst of this miserable and naughty world, through the lusts of the flesh, or the wiles of Satan, being purged and done away, it may be presented pure and without spot before Thee. And teach us who survive, in this and other daily spectacles of mortality to see how frail and uncertain our own condition is; and so to number our days, that we may seriously apply our hearts to that holy and heavenly wisdom, whilst we live here, which may in the end bring us to life everlasting, through the merits of Jesus Christ, thine only Son, our Lord. Amen.

After a short interval, upon a signal from the sheriff, he was launched into eternity, and immediately expired without apparent suffering. Agreeable to the request he had expressed to his clergymen, his body was delivered to his friends, and was decently interred in a part of one of the public cemeteries, appropriated to the burial of strangers.

THE TRIAL OF STEPHEN RUSSELL FOR ARSON, BOSTON, MASSACHUSETTS, 1835.

THE NARRATIVE.

This is the last of the trilogy of nineteenth century hangings for the crime of Arson in the Bay State, and a brief report of it having been recently found in a Boston newspaper of that day it is given here to complete this notable series. The story and the details of the execution are found in full in the Trial of Crockett, 1 Am. St. Tr. 440.

THE TRIAL.¹

*In the Supreme Judicial Court of Massachusetts, Boston,
December, 1835.*

HON. LEMUEL SHAW,² *Chief Justice.*

HON. SAMUEL S. WILDE.³
HON. MARCUS MORTON.⁴ } *Justices.*

December 21.

Stephen Russell had been jointly indicted with Simeon L. Crockett for designedly, feloniously, maliciously and wickedly setting fire to, and burning the dwelling house of Joshua Benson, situated in South Street Place, on Haskins' wharf, at or

¹ *Bibliography.* Boston Statesman, Dec. 23, 1835. It was not thought that there was any account of this trial in existence until it was discovered in this old Boston newspaper.

² See 1 Am. St. Tr. 443.

³ See 4 Am. St. Tr. 99.

⁴ MORTON, MARCUS. (1784-1864.) Born Freetown, Mass. Representative in Congress for Massachusetts, 1817-1821. Member Executive Council, 1823. Acting Governor, 1825. Justice Supreme Court, 1825-1840. Governor, 1840-1843. Collector of Boston, 1845-1849. Member State Legislature, 1858. Died in Taunton, Mass.

about twelve o'clock on the night of October 22, 1835. Mr. Benson was not himself an occupant of the house, but it was inhabited by nineteen or twenty Irish families, consisting of one hundred, or one hundred and twenty persons—men, women and children. The house was built of wood—very large and of a quadrangle form, with a courtyard between the two wings in the rear. The fire was discovered in a cellar, near the corner, on the south side of the building.

J. T. Austin,⁵ Attorney General, and *S. D. Parker* ⁶ for the Commonwealth.

*John Codman*⁷ and *Rufus Choate*⁸ for the Prisoner.

The prisoners being arraigned on December 15th, both pleaded not guilty, and *Mr. Codman* moved that they be tried separately, which was ordered by the Court. On December 15th, Crockett's trial began, and on December 17th the jury returned a verdict of guilty.⁹

Today came on the trial of *Russell* and the following jurors were selected: William W. Stone, foreman; Thomas Barnes, Alvan Drake, Romanus Emerson, Jefferson C. Farrar, James Garland, Ira Gibbs, Thomas Goddard, Ebenezer Kenfield, Cotton Thayer, Joseph Wheeler and Stillman Willis.

⁵ See 1 Am. St. Rep. 44.

⁶ PARKER, SAMUEL DUNN. (1780-1873.) Born Boston, son of Bishop Samuel Parker. Graduated Harvard, 1799. Admitted to Suffolk Bar, 1803. Member of State Senate two years. County Attorney for Suffolk County, 1830-1832. Died in Boston.

⁷ CODMAN, JOHN. (1808-1879.) Born New York. Graduated Bowdoin College, A. B., 1827. Harvard, A. M., 1830. Admitted to Essex Co. (Mass.) Bar, 1830. Practiced in Boston for many years. Member State Legislature, 1844-1845. Chairman Committee of Boston Latin School and active member in the Greek Department of the Examining Committee at Cambridge. Died in Boston. See Hist. of Bowdoin Coll. (Cleveland.) Bench and Bar of Mass. (W. T. Davis. Boston Journal, June 10, 1879.

⁸ CHOATE, RUFUS. (1799-1850.) Born Essex, Mass. Member Massachusetts Legislature, 1825. State Senator, 1827. Member United States House of Representatives, 1831-1835. United States Senator, 1839-1845. He was one of the greatest advocates that this country has produced. He died at Halifax, N. S.

⁹ See 1 Am. St. Tr. 440.

THE EVIDENCE.

The testimony against Russell was substantially the same as that given against Crockett (1 Am. St. Tr. 443-451), with the addition of Russell's own admission to Chief Engineer Hammond, Captain Case and Constable Shute and Andrews. To *Mr. Hammond*, Russell stated, that he "ought to have gone and complained against Crockett, and then he should have got clear himself." To *Capt. Case* he said, he had been with Freeman and Crockett in M'Vity's house, and was also at the wood pile, but that he knew nothing about setting the house on fire, or that any one intended to do it. Russell also told *Captain Case* that he did not hear Crockett tell Freeman about it, because he went up to the wood pile to speak to him, and left Russell standing off at a little distance. To *Constable Shute*, he said he was with Crockett, but when Crockett touched the fire, he was a little ways from him; and that

Crockett told him he had touched it. To *Andrews*, he said he was with Crockett the whole time, but that he did not set the fire, but had no doubt that Crockett did set the fire. He told Andrews that he was very sorry he had got into the difficulty, and was a damned fool for not complaining of others, and saved himself.

Freeman (See 1 Am. St. Tr. 446) disclosed some facts, not important, which he did not allude to, in the first trial, and a great number of incidental, but immaterial circumstances, corroborating Freeman, were elicited from the other witnesses, that were not brought out on Crockett's trial—such as the misunderstanding in M'Vity's house, (See 1 Am. St. Tr. 447). *John M. Salmon* saw Russell at the fire and he heard him telling half a dozen men, that he saw the fire when there were only some shavings burning in the cellar.

Mr. Choate admitted that Freeman had testified truly against Crockett, and that his evidence had justly handed him over to the gallows; but he contended that Freeman had intentionally misrepresented and invented the facts which pressed against Russell; and argued that Russell and Freeman were both precisely in the same predicament and were equally and clearly guilty of a misprision of felony, but not of the crime charged in the indictment. *Mr. Choate*, in support of his position, relied strongly on the fact stated by Crockett to Freeman (and confessed by Russell to his counsel) that he was criminally associated with the "strange woman," by the Cooper's shop at the time Crockett fired the building. *Mr. Choate* reminded the jury that though they might not convict

Russell, yet he would not be returned to the bosom of the community, but must inevitably be shut up in the State Prison for the minor offense of which he had been guilty.

Mr. Austin relied upon the clandestine movements of Russell and Crockett throughout the whole evening and night—the secret manner in which they left South Boston and Russell's inquiry for Crockett at M'Vity's, at the very moment he knew Crockett was at the door—and almost every other circumstance in the case, as proving an original agreement to set the building in a blaze.

JUDGE WILDE charged the jury very fully upon the law respecting aiding, abetting and consenting to a felony, and instructed them that if they considered the fact established, that Russell, after he started to accompany Crockett in his second attempt to fire the house, abandoned Crockett to consort with the woman, then he must, according to law, be considered as having ceased to aid and abet Crockett in the commission of the crime charged, but His Honor at the same time adverted to the imperfect character of the testimony upon that point.

The *Jury* retired at 20 minutes after 6, and at a quarter before 9, returned with a verdict of *Guilty* and a recommendation to mercy.

The *Prisoner* was sentenced to death and executed along with Crockett in the Boston Jail Yard on the morning of Wednesday, March 16, 1836. See 1 Am. St. Tr. 452.

THE TRIAL OF WILLIAM COBBETT FOR LIBEL. PHILADELPHIA, PENNSYLVANIA, 1797.

THE NARRATIVE.

As the prosecutions for breach of neutrality in Washington's administration clearly show (see 4 Am. St. Tr., 600) the people of the United States were violent partisans of the different belligerents in the European war, though a large majority supported the French Republic. And when Washington was succeeded in the Presidency by John Adams, the spirit of party broke loose in its worst shape and the newspapers of the day took the lead in invective and abuse. France was greatly displeased with the Jay treaty made with England and the Spanish minister to the United States, Don Carlos Martinez De Yrujo, presented a note to the American Secretary of State protesting in the name of his King against the treaty. The newspapers that favored England declared that though the Spanish note came from Madrid it was dictated at Paris and that the King of Spain was nothing but a puppet of the French Directory. The most scurrilous of these writers was an English emigrant named William Cobbett,¹ who in Philadelphia published a paper called *Porcupine's Gazette*. The Spanish note and the Spanish Minister, whom he called Don Yarico, "a frivolous Spaniard, half Don and half Sans Culotte," were both attacked by Cobbett.

¹ COBBETT, WILLIAM. He was born on a farm in Farnham, Surrey, "As he grew up his business was to drive robins from the turnip seeds and rooks from the peas. Then he went to clip box edgings, and weed beds of flowers in the Bishop of Winchester's garden, and at last set off to Kew Gardens where a good-natured Scotchman gave him a lodging and found him work. From Kew he went back to Farnham and from Farnham wandered up to London. There he toiled as a copying clerk in a lawyer's office, till one bright morning he took the King's shilling and joined the fifty-fourth regiment of foot. For eight years he was a soldier. But in 1792 he came over to Philadelphia and began to teach Frenchmen to speak English, for

Ever since Spain, observed the writer, has been ruled by princes of the Bourbon family, her name has been disgraced in peace and in war. Every important measure has been directed by the crooked politics of France. This had always been apparent, but never so apparent, as in the present reign and at the present time. The degenerate prince who then sat upon the Spanish throne seemed destitute, not only of the dignity of a King, but of the common virtues of a man. To ally himself to the murderers of a benevolent prince, the flower of his family, was not enough. He had become the tool of their most nefarious politics. As was the King at home, so was the Minister abroad. The nod of the five despots at Paris governed Charles. The French agents in America ruled Don Yarico. The infidel tyrants had seen fit to insult and rob the United States. The obsequious, imitative Don must therefore attempt the same.

The Spanish Minister complained to the American Secretary of State, Timothy Pickering,² and Cobbett was bound over for trial in the Federal District Court. But Don Yrujo, not content with this, had another prosecution begun in the Supreme Court of Pennsylvania before Chief Justice McKean, whose daughter he was engaged to marry.

When the trial came on McKean took the part of a witness and a judge. His charge to the jury was an able one and his explanation of the law of libel did him credit. His condem-

he had himself spent six months in France." See McMaster's Hist. People U. S.

He wrote a pamphlet on Dr. Priestly signed Peter Porcupine which had a large sale and gave him much reputation, he was encouraged by those who wanted to use his vigorous pen, and his Porcupine letters soon became a feature of the political strife. But he libelled so many people, that to escape the judgments against him he fled back to England where he died, aged 71, after a tumultuous career in his native land. See *ante*, preface.

² PICKERING, TIMOTHY. (1745-1829.) Born and died in Salem, Massachusetts. One of the Judges of the Court of Common Pleas, Essex Co., Mass., and sole Maritime Judge, 1776. Adjutant General, 1777. Postmaster General, 1791-1795. Secretary of War, 1795-1796. Secretary of State, 1795-1800. United State Senator, 1803-1811. Representative in Congress, 1813-1817.

nation of the ribaldry, the scurrility, the slanderous charges made daily by the writers of pamphlets, and contributors to Federal and Republican journals was richly deserved. Libeling, he declared, has become a kind of national crime. It marked off the American people not only from neighboring countries, but from the whole civilized world. American satire was billingsgate. The struggle had been, who could call names with the greatest variety of phrase, who could mangle the largest number of characters, who could tell the most shameful lies. Had he ended his charge with these remarks, he would have done well. But he went on, forgot that he was a judge, became an advocate, and in turn, libeled the prisoner at the bar. Impressed with the duties of his station, the jury were told to "use some endeavors for checking the evils by binding over the editor and printer of one of them, licentious and virulent, beyond all former example, to his good behavior."³

But the Grand Jury refused to return a true bill.

THE TRIAL.⁴

In the Supreme Court of Oyer and Terminer, Philadelphia, Pennsylvania, November, 1797.

HON. THOMAS MCKEAN,⁵ *Chief Justice.*

November 16.

The November Session of the Oyer and Terminer for the County of Philadelphia opened today and the Grand Jury being assembled, the following charge was delivered to them.

³ 2 McMaster, 353.

⁴ See Wharton's State Trials, 4 Am. St. Tr. 616.

⁵ MCKEAN, THOMAS. (1734-1817.) Born New London, Pa. Was elected in 1762 to the Delaware Assembly and continued to be returned for eleven years. Delegate to New York Congress, 1765. Judge of the Court of Common Pleas of Delaware. A signer of the Declaration of Independence and of the Articles of Confederation. Delegate from Delaware to the Continental Congress, 1774, 1776, 1778, 1783. President of the Congress, 1781. Chief Justice of Pennsylvania, 1777-1799. Governor of Pennsylvania, 1799-1808. Died in Philadelphia.

Jared Ingersoll,⁶ Attorney General, for the Commonwealth.

CHIEF JUSTICE MCKEAN (after touching generally upon the nature of the Grand Jury). Before I conclude, I am sorry to have occasion to mention that there is another crime that peculiarly concerns the judges of the Supreme Court to endeavor to correct: it is that of libeling. I will describe it at large.

Libels, or *libelli famosi*, taken in the most extensive sense, signify any writings, pictures or the like, of an immoral or illegal tendency; but in the sense we are now to consider them, are malicious defamations of any person, and especially of a magistrate, made public either by writing, printing, signs or pictures, in order to provoke him to wrath, or to expose him to public hatred, contempt or ridicule.

The direct tendency of these libels is the breach of the public peace, by stirring up the objects of them, their families and friends, to acts of revenge, and perhaps of bloodshed; which it would be impossible to restrain by the severest laws, were there no redress from public justice for injuries of this kind, which, of all others, are most sensibly felt; and which, being entered upon with coolness and deliberation, receive a greater aggravation than any other scandal or defamation, continue longer and are propagated wider and farther. And where libels are printed against persons employed in a public capacity, they receive an aggravation as they tend to scandalize the government, by reflecting on those who are intrusted with the administration of public affairs, and thereby not only endanger the public peace, as all others do by stirring up the parties immediately concerned to acts of revenge, but have also a direct tendency to breed in the people a dislike of their governors, and incline them to faction and sedition.

Not only charges of a heinous nature, and which reflect a moral turpitude on the party are libelous, but also such as set him in scurrilous, ignominious light; for every person desires to appear agreeable in life, and must be highly provoked by such ridiculous representations of him as tend to

⁶ See 4 Am. St. Tr. 625.

lessen him in the esteem of the world, and take away his reputation, which to some men is more dear than life itself; for these equally create ill blood, and provoke the parties to acts of revenge and breaches of the peace.

A defamatory writing expressing only one or two letters of a name, or using such descriptions and circumstances, feigned names or circumstances, in such a manner, that from what goes before and follows after it must needs be understood to signify such a person in the plain, obvious, and natural construction of the whole, is as properly a libel as if it had expressed the whole name at large, for it brings the utmost contempt on the law to suffer its justice to be deluded by such trifling evasions; and it is a ridiculous absurdity to say, that a writing, which is understood by the very meanest capacity, cannot possibly be understood by courts and juries.

It is equally ridiculous and absurd to suppose, that if a man speaks slanderous or defamatory words of another he may be sued and ample damages recovered for the injury; but if the same words are put in writing or printed, no punishment can be inflicted. Such a doctrine may gratify the wishes of envious and malicious cowards and assassins, but must be detested by all sensible and good men.

These offenses are punishable, either by indictment, information, or civil action; but there are some instances where they can be punished by a criminal prosecution only; as where the United States in Congress assembled, the legislature, judges of the Supreme Court, or civil magistrates in general, are charged with corruption, moral turpitude, base partiality, and the like, when no one in particular is named.

By the law of the Twelve Tables at Rome, libels which affected the reputation of another, were made capital offenses, but before the reign of Augustus, the punishment became corporeal only. Under the Emperor Valentinian, it was again made capital, not only to write, but to publish them, or even to omit destroying them. But by the laws of Pennsylvania, the authors, printers and publishers of a libel, are punishable by fine, and also, a limited imprisonment at hard labor and solitary confinement in jail, or imprisonment

only, or one of them, as to the court in discretion shall deem proper, according to the heinousness of the crime, and the quality and circumstances of the offender.

Any libeler, or person even speaking words of contempt against an inferior magistrate, as a justice of the peace or mayor, personally, though he be not in the actual execution of his office, or of an inferior officer of justice, as a constable, and such like, being in the actual execution of his office, may be bound to his good behavior by a single justice of the peace.

By this law and these punishments, the liberty of the press (a phrase much used, but little understood) is by no means infringed or violated. The liberty of the press is, indeed, essential to the nature of a free State, but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter, when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequences of his temerity. To punish dangerous or offensive writings, which, when published, shall, on a fair and impartial trial, be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundation of civil liberty. Thus the will of individuals is still left free; the abuse only of that free will is the object of legal punishment. Our presses in Pennsylvania are thus free. The common law, with respect to this, is confirmed and established by the Constitution. By the seventh section of the declaration of the principles of a free government, it is ascertained that the printing presses shall be free to every person, who undertakes to examine the proceedings of the legislature or any part of government. Men, therefore, have only to take care in their publications, that they are decent, candid and true; that they are for the purpose of reformation and not for defamation; and that they have an eye solely to the public good. Publications of this kind are not only lawful, but laudable. But if they are made to gratify envy or malice, and contain personal invectives, low

scurrility, or slanderous charges, they can answer no good purposes for the community, but on the contrary must destroy the very ends of society. Were these to escape with impunity, youth would not be safe in its innocence, nor venerable age in its wisdom, gravity and virtue; dignity and station would become a reproach, and the fairest and best characters that this or any other country ever produced, would be vilified and blasted if not ruined.

If any person, whether in a public or private station, does injury to an individual, or to the society, ample redress can be had by having recourse to the laws, and the proper tribunals where the parties can be heard personally, or by counsel, the truth can be fairly investigated, and justice be fully obtained; so that there can be no necessity or reason for accusing any one of public or private wrongs in pamphlets or newspapers, or of appeals to the people under feigned names, or by anonymous scribblers.

Every one who has in him the sentiments of either a Christian or gentleman, cannot but be highly offended at the envenomed scurrility that has raged in pamphlets and newspapers, printed in Philadelphia for several years past, inasmuch, that libeling has become a kind of national crime, and distinguishes us not only from all the States around us, but from the whole civilized world. Our satire has been nothing but ribaldry and Billingsgate; the contest has been, who could call names in the greatest variety of phrases; who could mangle the greatest number of characters; or who could excel in the magnitude and virulence of their lies. Hence the honor of families has been stained; the highest posts rendered cheap and vile in the sight of the people, and the greatest services and virtue blasted. This evil, so scandalous to our government, and detestable in the eyes of all good men, calls aloud for redress. To censure the licentiousness is to maintain the liberty of the press.

At a time when misunderstandings prevail between the Republics of France and the United States, and when our General Government have appointed public ministers to endeavor their removal, and restore the former harmony, some

of the journals or newspapers in the City of Philadelphia have teemed with the most irritating invectives, couched in the most vulgar and opprobrious language, not only against the French nation and their allies, but the very men in power with whom the ministers of our country are sent to negotiate. These publications have an evident tendency not only to frustrate a reconciliation, but to create a rupture, and provoke a war between the sister republics, and seem calculated to vilify, nay, to subvert all republican governments whatever.

Impressed with the duties of my station, I have used some endeavors for checking these evils, by binding over the editor and printer of one of them, licentious and virulent beyond all former example, to his good behavior; but he still perseveres in his nefarious publications; he has ransacked our language for terms of insult and reproach, and for the basest accusations against every ruler and distinguished character in France and Spain with whom we chance to have any intercourse, which it is scarce in nature to forgive; in brief, he braves his recognizance and the laws. It is now with you, gentlemen of the Grand Jury, to animadvert on his conduct; without your aid it cannot be corrected. The government that will not discountenance, may be thought to adopt it, and be deemed justly chargeable with all the consequences.

Every nation ought to avoid giving any real offense to another. Some medals and dull jests are mentioned and represented as a ground of quarrel between the English and Dutch in 1672, and likewise called Louis the XIVth, to make an expedition into the United provinces of the Netherlands in the same year, and nearly ruined the commonwealth.

We are sorry to find our endeavors in this way have not been attended with all the good effects that were expected from them; however, we are determined to pursue the prevailing vice of the times with zeal and indignation, that crimes may no longer appear less odious for being fashionable, nor the more secure from punishment from being popular.

The criminal law of this State is so pregnant with justice, so agreeable to reason, so full of equity and clemency, that

even those who suffer by it cannot charge it with rigor. It is so adapted to the common good as to suffer no folly to go unpunished, which that requires to be restrained; and yet so tender of the infirmities of human nature, and of the wives and children of even the greatest offenders, as to refuse no indulgence which the safety of the people will permit. It gives the rulers no power but of doing good, and deprives the people of no liberty but of doing evil. We are now, thank God! in the peaceable and full enjoyment of our laws, of the free administration of justice, and in complete possession of religious, civil and political liberty. May the divine Governor of the world continue these blessings to us! and impress it as a duty which we owe to ourselves, who enjoy them, to those virtuous men who, under God, have been chiefly instrumental in procuring them, and to our posterity who will claim at our hands this noblest inheritance, to maintain and defend them at every hazard of life and fortune!

You may now, gentlemen, retire to your room. Inquire with zeal, hear with attention, deliberate with coolness, judge with impartiality, and decide with fortitude—and may God overrule and direct all your proceedings to the furtherance of justice and the happiness of the people!

The following Bill of Indictment was thereupon presented to the Grand Jury:

Philadelphia County, ss.

The Grand Inquest of the Commonwealth of Pennsylvania, upon their oaths and affirmations respectively, do present, that William Cobbett, late of the City of Philadelphia, in the County of Philadelphia, yeoman, being a person of a wicked and turbulent disposition, and maliciously designing and intending to vilify and defame the person, character and government of his Catholic Majesty Charles the Fourth, King of Spain, and to disturb the peace and amity now happily subsisting between the same and the United States of America; and also to vilify and defame the person and character of Don Carlos Martinez d'Yrujo, the Minister Plenipotentiary and Envoy Extraordinary from his Catholic Majesty, the said King of Spain, to the United States, on the seventeenth day of July, in the year of our Lord one thousand seven hundred and ninety-seven, at the City of Philadelphia, in the county aforesaid, wickedly and maliciously did print and publish, and cause to be printed and published, a certain scandalous, false and malicious libel, of and con-

cerning his Catholic Majesty, the said King of Spain, and of and concerning the said Don Carlos Martinez d'Yrujo, the said Minister Plenipotentiary and Envoy Extraordinary from his said majesty to the United States, in a certain newspaper called Porcupine's Gazette, which said newspaper was then and there printed and published by the said William Cobbett, and in the form of observations signed by "An Old Soldier," and directed and addressed for Porcupine's Gazette, in which said libel are contained, among other things and expression, divers of false, feigned, scandalous and malicious matters, according to the tenor following, to-wit: "Ever since Spain has been governed by princes of the Bourbon family, the Spanish name has been disgraced in peace and in war; every important measure has been directed by the crooked politics of France. This connection, like the obscene harpies of old, contaminates whatever it touches. But never has this been so conspicuous as in the present reign, and more especially at the present period. The degenerate prince that now sways the Spanish sceptre (thereby meaning his Catholic Majesty, the said King of Spain), whom the French (the French Republic, meaning have kept on the throne merely as a trophy of their power, or as the butt of their insolence, seems destitute not only of the dignity of a king, but of the common virtues of a man. Not content with allying himself to the murderers of a benevolent prince, who was the flower of his family, he (his Catholic Majesty, the said King of Spain, meaning) has become the supple tool of all their (the said French Republic meaning) most nefarious politics. As the sovereign (his Catholic Majesty, the said King of Spain, meaning) is at home, so is the minister abroad (meaning the said Don Carlos Martinez d'Yrujo, the said Minister Plenipotentiary and Envoy Extraordinary from his said Catholic Majesty, the said King of Spain, to the United States.) The one (meaning his Catholic Majesty, the said King of Spain) is governed like a dependent by the nod of the five despots at Paris, and the other (meaning the said Don Carlos Martinez d'Yrujo, the said Minister Plenipotentiary from his said Catholic Majesty) by the directions of the French agent in America. Because those infidel tyrants (the French Republic and their agents, meaning) had thought proper to rob and insult this country and its government, and we have thought proper, I am sorry to add, to submit to it, the obsequious imitative of his masters (the French Republic and their agents, meaning).

And, also, the said William Cobbett did then and there, in the same newspaper, and connected with the libel aforesaid, print and publish the false, feigned, scandalous and malicious words and matters, according to the tenor following, to-wit:

"In the present state of things, the independence of the United States is little more than a shadow; it (the independence of the United States, meaning) is really not worth what it cost to acquire and support it; and, unless a stop can be put to the progress of faction and foreign interference (the interference of the said Don Carlos Martinez d'Yrujo, and the government of his said Catholic Majesty, meaning) instead of a blessing, it (the independence of the

United States, meaning) will ere long be a burden which even the vassals of Prussia would not take off our hands as a gift."

And the grand inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said William Cobbett, being as aforesaid, and designing and intending as aforesaid, on the 24th day of July, in the year aforesaid, wickedly and maliciously did print and publish and cause to be printed and published, a certain other false, scandalous and malicious libel, of and concerning the said Don Carlos Martinez d'Yrujo, the said Minister Plenipotentiary and Envoy Extraordinary from the said King of Spain to the said United States, in the form of a communication; in which said last mentioned libel are contained the false, scandalous and malicious matters and things, according to the tenor following to-wit: "After such examples, how can it be wondered at that an advertisement should appear in our public prints, giving notice of a swindling assignment of his estate by a member of Congress, in the vicinity of the capital, for the purpose of defrauding his creditors, or that our people should join the French marauders, and pillage the property and threaten the lives of their defenseless countrymen under the flag of those pirates, or that we (the people of the United States, meaning) are so abused and humbled as to submit with patience to the public insults of a frivolous Spaniard, half Don and half *sans-culotte* (meaning thereby the said Don Carlos Martinez d'Yrujo, Minister Plenipotentiary and Envoy Extraordinary as aforesaid)."

And the grand inquest aforesaid, upon their oaths and affirmations aforesaid, further do present, that the said William Cobbett, being as aforesaid, and designing and intending as aforesaid, on the thirty-first day of July, in the year aforesaid, at the city and within the county aforesaid, wickedly and maliciously did print and publish, and cause to be printed and published, a certain other false, scandalous and malicious libel, of and concerning the said King of Spain, and of and concerning the said Don Martinez d'Yrujo, the said Minister Plenipotentiary and Envoy Extraordinary of the said King of Spain to the said United States; in which said last mentioned libel, among other things, divers false, scandalous and malicious matters are contained, according to the tenor following to-wit: "What will his magnanimous majesty say when, by the result of Don Yarico's (the said Don Carlos Martinez d'Yrujo, meaning) conspiracy with Blount (meaning a conspiracy, or crime, for which William Blount heretofore a senator of the United States, was impeached by the House of Representatives of the United States and expelled from the Senate thereof), and his appeal to the people, and this political puppet (the said Don Carlos Martinez d'Yrujo, meaning) shall have brought on a war with America, when the standard of liberty shall be unfurled on the Isthmus of Darien, then his majesty (his said Catholic Majesty, the King of Spain, meaning) may, perhaps, find the freeborn sons of America are not that dastardly race of cowards which the submission to the insults of his (the said King of Spain, meaning) treacherous and piratical ally (the Republic of France, meaning), had taught him to believe them;" to the great scandal and

infamy of his Catholic Majesty, the King of Spain, of his government, and the said Don Carlos Martinez d'Yrujo, Minister Plenipotentiary and Envoy Extraordinary from his said Catholic Majesty, the said King of Spain, to the evil and pernicious example of all others in the like case offending, against the Act of Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

JARED INGERSOL,
Attorney General.

The *Grand Jury* returned the indictment into court *No Bill*.

THE TRIAL OF MATTHEW LYON FOR A SEDITIOUS LIBEL, VERGENNES, VERMONT, 1798.

THE NARRATIVE.

The Sedition Law which was passed in July, 1798, imposed a penalty on unlawful combinations to oppose the measures of Government, and in counseling insurrections and riots. But its most objectionable feature was the clause which made it a crime punished by fine and imprisonment to print or publish any false, scandalous and malicious writings against the Government, Congress or the President, with intent to defame them, to bring them into contempt or to excite the hatred of the people against them. As its object was plainly to muzzle the opposition press and to punish those newspapers and editors for their continued attacks on the high officials of the Government and their acts, a great protest arose throughout the land against this blow at the right of freedom of speech and the liberty of the press.

The first to feel the weight of the law was Matthew Lyon,¹

¹LYON, MATTHEW. (1746-1822.) A man famous in American politics for many years. He was born in Ireland and came to America in his youth so poor that he was sold to pay his passage to a Mr. Liversworth of Vermont. He served his time faithfully, became acquainted with the leading men of the country and was soon an officer of militia in General Gates' Army. He got into trouble there, was cashiered and returned to Vermont where he settled in a village called Fair Haven and began the manufacture of paper, type and iron ware. The General Assembly granted him power to raise by lottery "600 bushels of wheat"—the standard of value in those days to enable him to enlarge his furnaces so as to cast "flatirons, spades, bake pans and dish kettles." He served in the Legislature ten years and was assistant judge of Rutland County. He married the daughter of Governor Chittenden. He founded a newspaper, and was elected to Congress. During his imprisonment for libel he was re-elected, and an effort by his political opponent to prevent his taking his seat because he had been convicted of being a notorious seditious person was defeated. In 1801 he removed to Kentucky and in 1803 returned to Washington as a representative in Congress from that state. He continued to sit as a member from Kentucky through

a member of Congress from Vermont. Lyon was a witty, red-faced Irishman who had come to America when a boy as a redemptioner, had served in the Revolution, had acquired large property including a leading newspaper, the Vermont Gazette, and had a seat in the House of Representatives. He was a rabid Republican, and the Federalists, who thoroughly hated him, called him the wild Irishman. With one of their number, Griswold, he had a rough and tumble fight on the floor of the House. Scarcely had the Sedition Act become a law, when Lyon was arrested for publishing in his newspaper a letter from himself which denounced the President's Fast Day proclamation as using the "sacred name of religion as a state engine to make mankind hate and persecute each other," lamented that "every consideration of the public welfare was swallowed up in a continual grasp for power, and unbounded thirst for ridiculous pomp, foolish adulation and selfish avarice," and that while good men were turned away for "independency of sentiment, mean men" got places. Another count charged him with printing a letter from France in which the writer expressed surprise that the answer of the House to a recent speech of President Adams had not been "an order to send him to a madhouse."

When the trial came on, he conducted his own case. He

the eighth, ninth, tenth, and eleventh Congresses, retiring in 1811, having previously refused the commissaryship of the Western army tendered to him by Mr. Jefferson. After his withdrawal from Congress, Mr. Lyon (or Col. Lyon, as he appears by this time to have been called) returned to Kentucky, where a short time afterwards he received from Mr. Monroe the appointment of United States factor for the Cherokee nation. This drew him west of the Mississippi, and though by this time an old man, he displayed in the uncleared plains of the then outskirts of the Union the same surprising activity that he had shown in the once border lands of Vermont and Kentucky. He engaged on a considerable scale in commerce on the Arkansas and Mississippi rivers. "On August 1, 1822, at Spadre Bluff, in his seventy-seventh year, died Matthew Lyon, loved as a neighbor, for he was full of that chivalrous spirit of generosity which is not a strange inmate of an Irish heart; and valued as a friend, for upon that warm temperament had been grafted the fertility of expedients belonging to the American pioneer." Wharton, p. 344. In 1840 Congress ordered that the fine imposed at the trial in 1798 should with interest be refunded to his heirs.

attempted to prove the truth of his own charges by making a witness of the Judge. Have you not, asked Lyon, have you not often dined with the President and seen his ridiculous pomp and parade? The Judge protested that on such occasions he had seen only a decent simplicity, and when the verdict of guilty was returned, scolded the prisoner, fined him one thousand dollars, and committed him to jail for four months.²

His friends got up a petition for his pardon, but as he refused to sign it, the President refused to pardon him. But he was triumphantly re-elected to Congress while still in prison.³

THE TRIAL.⁴

*In the United States Circuit Court, Vergennes, Vermont,
October, 1798.*

HON. WILLIAM PATTERSON,⁵
HON. SAMUEL HITCHCOCK,⁶ } *Judges.*

October 7.

The *Prisoner* having been arrested immediately after the finding of the indictment, appeared today and pleaded *not guilty*.

Charles Marsh,⁷ District Attorney, for the Government.

² McMaster Hist. People U. S.

³ Elson Hist. U. S. 210.

⁴ See 4 Am. St. Tr. 616.

⁵ See 4 Am. St. Tr. 638.

⁶ HITCHCOCK, SAMUEL. (1755-1813.) Born Brimfield, Mass. Graduated Harvard, 1777. Read law with Jedediah Foster, Brookfield, Mass. Removed to Burlington, Vt., 1786, to practice law. States Attorney, Chittenden County, 1787-1790. Representative, 1789-1793. Member of convention of Vermont to ratify the Constitution (Bennington), 1791. Trustee and Secretary Vermont University, 1791-1800. Attorney General, 1796. Member of Second Electoral College, 1792. United States District Judge, District of Vermont, 1793. United States Circuit Judge, 1802. Married (1789) a daughter of Ethan Allen.

⁷ MARSH, CHARLES. (1765-1840.) Born Lebanon, Conn. Practiced law in Woodstock, Vt., for half a century. In 1815-1817 was a representative in Congress and was one of the founders of the American Colonization Society. He died in Woodstock.

The *Prisoner* asked that he be granted bail, which was allowed, and he gave bail for his appearance on October 9.

October 9.

The *Jury* was selected and sworn.

Mr. Marsh opened the case and produced a letter from prisoner dated Philadelphia, July 7, 1798, and postmarked on the same day and which was presented in Vermont on July 23.

The *Prisoner* admitted the authorship and publication.

The indictment was found on October 5, 1798, contained three counts, the first of which, after averring the intent to be to "stir up sedition, and to bring the President and Government of the United States into contempt," laid the following libelous matter:

"As to the Executive, when I shall see the efforts of that power bent on the promotion of the comfort, the happiness, and accommodation of the people, that executive shall have my zealous and uniform support: but whenever I shall, on the part of the Executive, see every consideration of the public welfare swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice; when I shall behold men of real merit daily turned out of office, for no other cause but independency of sentiment; when I shall see men of firmness, merit, years, abilities, and experience, discarded in their applications for office, for fear they possess that independence, and men of meanness preferred for the ease with which they take up and advocate opinions, the consequence of which they know but little of—when I shall see the sacred name of religion employed as a state engine to make mankind hate and persecute one another, I shall not be their humble advocate."

The second count consisted of having maliciously, etc., and with intent, etc., published a letter, said to be a letter from a diplomatic character in France,^s containing two paragraphs, in the words following:

^sThe writer of the letter was Joel Barlow (1755-1812), who died while United States Minister to Poland, but of whom an American historian says: "This Barlow is memorable as the only one of our countrymen who has been guilty of the folly of attempting to produce an American epic poem. But a better title to immortality is the infamous part he bore in enticing ignorant Frenchmen to buy and settle the lands of the Scioto Company in Ohio." 2 McMaster Hist. People U. S.

"The misunderstanding between the two governments (France and the United States), has become extremely alarming; confidence is completely destroyed, mistrusts, jealousy, and a disposition to a wrong attribution of motives, are so apparent, as to require the utmost caution in every word and action that are to come from your Executive. I mean, if your object is to avoid hostilities. Had this truth been understood with you before the recall of Monroe, before the coming and second coming of Pinckney; had it guided the pens that wrote the bullying speech of your President, and stupid answer of your Senate, at the opening of Congress in November last, I should probably had no occasion to address you this letter.

"—— But when we found him borrowing the language of Edmund Burke, and telling the world that although he should succeed in treating with the French, there was no dependence to be placed on any of their engagements, that their religion and morality were at an end, that they would turn pirates and plunderers, and it would be necessary to be perpetually armed against them, though you were at peace: we wondered that the answer of both Houses had not been an order to send him to a mad house. Instead of this the Senate have echoed the speech with more servility than ever George III. experienced from either House of Parliament."

The third count was for assisting, counselling, aiding, and abetting the publication of the same.

It was proved that *Mr. Lyon* had several times read at public meetings in Vermont the letter (known at the time as the "Barlow" letter) from which the libelous matter in the second count was taken.

Several witnesses were called to show that *Mr. Lyon*, both in public and in private, had extensively used the letter for political purposes, and in doing so had frequently made use of language highly disrespectful to the administration. On cross-examination it appeared that on one occasion he had endeavored to prevent it from being printed.

The prosecution having closed, *Mr. Lyon*, stated his defense to consist in three points: first, that the court had no jurisdiction of the offense, the act of Congress being unconstitutional and void, if not so generally, at least, as to writings composed before its passage; second, that the publication was innocent; and third, that the contents were true.

On the first two points he offered no testimony, but on the third he proposed to call JUDGE PATTERSON, the presiding judge, and *Judge Israel Smith*.

JUDGE PATTERSON being then on the bench, was then asked by *Mr. Lyon*, whether he had not frequently "dined with the President, and observed his ridiculous pomp and parade?"

JUDGE PATTERSON replied that he had sometimes, though rarely, dined with the President, but that he had never seen any pomp or parade; he had seen, on the contrary, a great deal of plainness and simplicity.

Mr. Lyon then asked whether he (the judge) had not seen at the President's more pomp and servants there, than at the tavern at Rutland. To this, no answer was given.⁹

No other witness was called.

Mr. Marsh, district attorney, addressed the jury at length, urging, (1) the libelous nature of the offensive passages, which were clearly within the act of Congress, and (2) the declared intentions with which they had been used by the defendant, which expressly came up to the innuendoes.

*Judge Smith*¹⁰ (the then Chief Justice of Vermont), who

⁹ The oddity of this proceeding—in which the fact of the defendant's asking a judge on the bench such a question as this, is only equaled by the judge setting to work to give a regular answer—can only be explained on the ground that the defendant, having no counsel, did not know any better, and that the Court were unwilling to curtail him in his supposed defense. The answer, as reported in the *Aurora*, a newspaper, is the same as above, varying, however, in the last line to "in place of pomp and parade, I have seen a good deal of hospitality, without much ceremony." The report in the *Spectator* continues: "And it was evident *Mr. Lyon* expected no more." That in the *Aurora* makes up for this by giving a still stronger turn the other way. "The judge, conscious that there was some difference between the table at Braintree, and the humble fare of a country tavern, with the privileges of half a bed, made no reply, but smoked a cigar."

¹⁰ SMITH, ISRAEL. (1759-1810.) Born Suffield, Conn. Graduated Yale, 1781; admitted to bar, 1783; settled in Rupert, Vt., which he represented in the State legislature in 1785, 1788, 1789 and 1790. In 1789 was one of a commission appointed by the legislature to adjust the controversy in regard to jurisdiction between Vermont and New York. In 1791 was a member of the convention that ratified the United States Constitution. Removed to Rutland the same year, and was a Democratic representative from western district of Vermont in second, third and fourth Congresses, 1791-1797, being defeated for re-election in 1796 by Matthew Lyon. In 1796 member of State legislature and elected by that body Chief Justice of

then appeared as counsel for the defendant, declining to reply, in consequence of the shortness of time allowed him for preparation, he having been called into the case at the bar, the *defendant* addressed the jury at great length, insisting on the unconstitutionality of the law, and the insufficiency of the evidence to show anything more than a legitimate opposition.

PATTERSON, J., (to the Jury): You have nothing whatever to do with the constitutionality or unconstitutionality of the sedition law. Congress has said that the author and publisher of seditious libels is to be punished; and until this law is declared null and void by a tribunal competent for the purpose, its validity cannot be disputed. Great would be the abuses were the constitutionality of every statute to be submitted to a jury, in each case where the statute is to be applied. The only question you are to determine is, that which the record submits to you. Did Mr. Lyon publish the writing given in the indictment? Did he do so seditiously? On the first point, the evidence is undisputed, and in fact, he himself concedes the fact of publication as to a large portion of libelous matter. As to the second point, you will have to consider whether language such as that here complained of could have been uttered with any other intent than that of making odious or contemptible the President and government, and bringing them both into disrepute. If you find such is the case, the offense is made out, and you must render a verdict of guilty. Nor should the political rank of the defendant, his past services, or the dependent condition of his family, deter you from this duty. Such considerations are

State supreme court. Elected to seventh Congress (1801-1803). United States Senator, 1807. Failed of re-election to the Governorship in 1808. Presidential elector, 1809. Soon after he became Governor his health failed, and he died insane at Rutland, Vt. He advocated substitution of confinement at hard labor for capital punishment, state supervision of highways, and the building of a state prison. His attempts to enforce the embargo act of 1807 and summary dealing with smugglers contributed to his defeat for the Governorship. Was a judge of incorruptible integrity. See Dexter, Yale Biog. E. Annals; Biog. Congress. Direct.; Lamb's Biog. Dict.

for the court alone in adjusting the penalty they will bestow. The fact of guilt is for you, for the court, the grade of punishment. As to yourselves, one point, in addition, in exercising the functions allotted to you, you must keep in mind, and that is, that in order to render a verdict of guilty, you must be satisfied beyond all reasonable substantial doubt that the hypothesis of innocence is unsustainable. Keeping these instructions in your mind, you will proceed to deliberate on your verdict.

THE VERDICT AND SENTENCE.

At about eight o'clock in the evening of the same day, after about an hour's absence, the *Jury* returned with a verdict of *guilty*.

Mr. Lyon being called up for sentence, a postponement was obtained till the next morning.

October 10.

JUDGE PATTERSON. Matthew Lyon, as a member of the federal legislature, you must be well acquainted with the mischiefs which flow from an unlicensed abuse of government, and of the motives which led to the passage of the act under which this indictment is framed. No one, also, can be better acquainted than yourself with the existence and nature of the act. Your position, so far from making the case one which might slip with a nominal fine through the hands of the court, would make impunity conspicuous should such a fine alone be imposed. What, however, has tended to mitigate the sentence which would otherwise have been imposed is, what I am sorry to hear of, the reduced condition of your estate. The judgment of the court is, that you stand imprisoned four months, pay the costs of prosecution, and a fine of one thousand dollars, and stand committed until this sentence be complied with.

THE TRIAL OF ANTHONY HASWELL FOR A SEDITIONOUS LIBEL, WINDSOR, VERMONT, 1800.

THE NARRATIVE.

After Matthew Lyon was sent to jail his friends, to relieve his distress, started a lottery—a very popular method of raising money at that day. His houses, his lands, his mills were the prizes and the Vermont Gazette in an article containing some strong criticism of the prosecution of Lyon, called upon the people to save from poverty the defender of their rights. The United States Marshal was charged with extreme cruelty in the treatment of his prisoner, and the Government was charged with selecting for office Tories who had fought against independence. The printer Anthony Haswell¹ was indicted under the Sedition Act, convicted, fined and imprisoned.

THE TRIAL.²

*In the United States Circuit Court, District of Vermont,
Windsor, 1800.*

HON. WILLIAM PATTERSON,³
HON. SAMUEL HITCHCOCK,⁴ } *Judges.*

April 28.

The *Defendant* had been previously indicted, under the statute (the Sedition Act) for publishing the following libelous matter in the Vermont Gazette:

¹ HASWELL, ANTHONY. (1756-1816.) Born Portsmouth, England. Emigrated to America before the Revolution and joined the Continental Army, being present at the Battle of Monmouth. After leaving the army he went to Boston, where he learned the printers' trade. After living a time in Hartford, Conn., and Springfield, Mass., he removed to Bennington, Vt., and established the Vermont Gazette, which he conducted until his death. "At the expiration of his sentence, an immense concourse of people from the neighboring county assembled to welcome him back to liberty, and to signalize

"To the enemies of political persecution in the western district of Vermont:

"Your representative (Matthew Lyon) is holden by the oppressive hand of usurped power in a loathsome prison, deprived almost of the right of reason, and suffering all the indignities which can be heaped upon him by a hard-hearted savage, who has, to the disgrace of Federalism, been elevated to a station where he can satiate his barbarity on the misery of his victims. But in spite of Fitch (the marshal) and to their sorrow, time will pass away; the month of February will arrive, and with it bring liberty to the defender of your rights? No. Without exertion it will not. Eleven hundred dollars must be paid for his ransom. This money it is impossible for Col. Lyon to raise in an ordinary way. A contribution is talked of, but this is an uncertain, humiliating, and precarious method. Col. Lyon has adopted a plan which accords with his feelings, and he hopes it may be with those of his friends. The plan is this: he has purchased a grant for a lottery, upon which he has formed a scheme whereby he designs to sell his tickets for money to the amount of his fine and consequent losses; and pay the prizes in land, houses, and such other property as he has to dispose of. May we not hope that this amount may answer the desired purpose, and that our representative shall not languish a day in prison for want of money after the measure of Federal injustice is filled up?

"At the same time the administration publicly notified that Tories, men who had fought against our independence, who had shared in the desolation of our homes, and the abuse of our wives and daughters, were men who were worthy of the confidence of the government."

The Defendant appeared in court today and pleaded *Not Guilty*.

*Israel Smith*⁵ and *Mr. Fay*, for the *Prisoner*.

The *Prisoner's Counsel* made a motion for a continuance on the ground of the absence of material witnesses. They filed an

their disapprobation of his imprisonment. He marched forth from his quarters at the jail to the tune of Yankee Doodle, played by a band, while the discharge of cannon signified the general satisfaction at his release. . . . Mr. Haswell was highly respected, not only by his friends, but by his political opponents. He was distinguished in private life by exemplary conduct in the discharge of his duties, and by his devotion to the moral and religious improvement of society." Wharton St. Tr., p. 687. In 1844 Congress passed an act refunding the fine and over 40 years' interest to Mr. Haswell's representatives.

² Wharton's State Trials, see 4 Am. St. Tr. 616.

³ See 4 Am. St. Tr. 638.

⁴ See *ante*, p. 689.

⁵ See *ante*, p. 692.

affidavit to the effect that the prisoner expected to prove by General Darke, of Virginia, and Mr. McHenry, the Secretary of War, that the government had on one occasion acknowledged the policy of occasionally appointing Tories to office; and that every effort had been made to obtain the attendance of these gentlemen, but in vain. The affidavit also stated that two witnesses from the immediate neighborhood were expected, but had not yet arrived, one being detained by accident, and the other by sickness.

The continuance was resisted by *District Attorney Marsh*,⁶ for the Government, on the ground, that due diligence had not been shown in collecting the wanting testimony, and that even if it could be got, it would be inadmissible.

JUDGE PATTERSON said that the first item of evidence would not be admissible, even if present, as it would not be a flat justification; but that in order to permit the defendant to avail himself of the attendance of other witnesses whom he momentarily expected, a postponement of several days would be granted.

May 5.

The *District Attorney* opened the case on the part of the United States. Evidence was produced to show that the passages in the indictment had been published in a newspaper called the *Vermont Gazette*, edited by the defendant; the first being part of an advertisement issued by a committee of Colonel Lyon's friends, the second being an extract from the *Aurora*.

In justification of the first paragraph, the *Prisoner's Counsel* called witnesses to prove circumstances of peculiar hardships attending Lyon's imprisonment.

The *Jury* were addressed by the *District Attorney* and the *Defendant's Counsel*, and afterwards by the *Defendant* himself, who said:

With respect to the first count, gentlemen, I believe you will entertain a doubt at least whether I am, in fact, the publisher of it, in the common acceptation and real meaning

⁶ See *ante*, p. 689.

of the term. It is true, gentlemen, that it was published in my paper; that I am sole editor and printer, and that I was at home at the time; but it is equally true that the publication was made by Elias Buel, as manager, and James Lyon, as clerk of Col. Lyon's lottery; and that, if any consequences flowed from it, both they and I rationally expected they must bear them.

If either of you, gentlemen, should publish in a newspaper, that you would reward in a pecuniary manner any person who should perform a certain business, could a person performing claim his reward of the printer? If either of you, being sufficiently responsible, should publish, with your name, anything that operated to your neighbor's injury, could an action lie against a printer?

If he could not, gentlemen, in the case stated, call on the printer for his reward, due in consequence of another person's publication, on what grounds of reason can a printer be called on in a case affecting not merely interest, but personal liberty, the dearest privilege of life, for a publication avowed by responsible men, and accompanied with their names.

But even allowing that I was the publisher of the advertisement on which I stand indicted, I believe it will be admitted by you all, gentlemen, as a principle founded on the reason and fitness of things, that no inference ought to be drawn from a passage on which a citizen is indicted, that does not clearly flow from the premises; that the plain and obvious meaning of the written or printed words, ought not in any wise to be evaded; nor any construction to be put upon it, in order to criminate the citizen, but what it will clearly and unequivocally bear, much less should any innuendo or exemplification be admitted that does not spring spontaneously from the writing itself.

With this impression, gentlemen, I must beg you to read with attention the first section of the advertisement published by Major Buel and James Lyon, as aforesaid, on which I stand indicted; I mean from the beginning to the first close or partial close of a sentence; that is, to the first semicolon. If you can do this, and on your oaths declare that Major Buel

and Mr. Lyon as publishers, of myself as their humble agent, meant to call in question the authority of the United States, and did not mean to refer to an assumption of power, and undue vigor, in the marshal and his agents, solely and exclusively, I shall acknowledge myself more deceived with respect to the general application of meaning to printed and written language, than I ever remember to have been at any former period of my life.

I am persuaded, gentlemen, that whatever may be your judgment with respect to the meaning of the clause in question, and the intention of its authors, when you attend to the evidence of Mr. Hicks, of Mr. Fitch himself, that you will be sensible that I had conceived the idea that a federal officer had usurped a power of adding to the vigor of the law, by unnecessary severity, a total failure of politeness, and ungentlemanlike behavior, and in this idea, whether true or false, I was fully confirmed by his conduct subsequent to the letter I wrote to him, relative to the sentiment of a judge of this honorable court.

JUDGE PATTERSON charged the jury that, though the statute had benignly altered the common law, in so far as to permit the truth to be given in evidence, yet, unless the justification came up to the charge, it was no defense. Here it was for the jury to determine whether the violent language applied to the marshal as descriptive of his treatment of Colonel Lyon, had been sustained by the evidence. If it had not, no defense had been made out. As to the charge against the administration of selecting Tories "who shared in the desolation of our homes," etc., no attempt at justification has been made. If the jury, therefore, believe, beyond reasonable doubt, that the intent was defamatory, and the publication was made, they must convict. Nor was it necessary that the defendant should have written the defamatory matter. If it was issued in his paper, it is enough.

The *Jury*, after a short deliberation, returned a verdict of *guilty*.

The COURT sentenced the *Prisoner* to a fine of two hundred dollars, and an imprisonment of two months.

THE TRIAL OF JOHN BROWN FOR TREASON AND INSURRECTION, CHARLESTOWN, VIRGINIA, 1859.

THE NARRATIVE.

The little town of Harper's Ferry lying in the beautiful Shenandoah Valley, at the base of the Blue Ridge Mountains and at the junction of the Shenandoah and Potomac Rivers, boasted a United States Arsenal and Armory as its principal attractions to tourists and visitors. In October, 1859, its peaceable citizens and the well-to-do farmers of the neighborhood no more feared an armed invasion than does the quietest and sleepest New England village today.¹ But entirely unsuspected by them, a farm a few miles distant which had been rented three months before by a man calling himself Isaac Smith, was the meeting place of a band of northern Abolitionists who had already made themselves notorious in the Kansas and Missouri struggle. No one thought that the gray headed farmer and his sons had any other disposition than stock raising and farming. But here its members assembled and to it munitions of war, contributed by northern supporters, were being carried. And in the early morning of Sunday, October 16, 1859, their leader, John Brown,²

¹ Villard, p. 430.

² BROWN, JOHN. (1800-1859.) Born Torrington, Conn., his ancestors on both sides having served in the Revolutionary war. His father moved to Ohio in 1805 and engaged in farming and cattle raising. Young Brown grew up on the farm and from fifteen to twenty worked at the tanners' trade, and afterwards as a cattle raiser and wool dealer. In 1840 he engaged as a surveyor in the neighborhood of Harper's Ferry, Va., thus acquiring knowledge of that country and perhaps there hearing the remark which had been attributed to George Washington, that the mountains around Harper's Ferry would serve as a stronghold for the Continental Army in the event it were repulsed by the English. Subsequently, Brown expressed the opinion that these same mountains were designed by the Almighty as a refuge for the fugitive slaves. In 1845 he en-

led his men down the mountains and crossed the river into Virginia.³

Brown's reasons for choosing Harper's Ferry were: (1) the presence of a large slave population, (2) the proximity of

gaged in the manufacture of wines on a considerable scale. In 1846 Gerrit Smith, a great land owner of New York, set aside 120,000 acres of his large estate in New York to be given to "worthy colored people," who would clear and cultivate it, and Brown made a proposal which was accepted, to settle himself on the land and aid the negroes in their efforts to acquire homes. He was given a piece of land at North Elba upon which he moved with his family, and which he ever afterwards regarded as his home.

Shortly after locating in New York Brown became very hostile to all slave owners. He denounced slavery in language fierce and bitter, declaring that slave holders had forfeited their right to live, and that the slaves had the right to resort to any means to rid themselves of their masters and gain their liberty. In 1854 five of Brown's sons moved to Kansas, attracted by the double inducement of finding desirable homes and of lending their aid to the effort to make Kansas a free State. In 1855, John Brown himself went to Kansas and played no small part in the stirring scenes which occurred in that State.

During this time Brown's idea as to the best method by which to accomplish his object materially changed. As early as 1847 he had consulted with Frederick Douglass and secured his approval of a scheme for transporting fugitive slaves into a free country, and protecting them until such transportation could be accomplished. In August, 1859, he had a meeting with Douglass, to whom he told of his Harper's Ferry scheme: "Through Harry Watson, a colored Chambersburg agent of the Underground Railroad, of great service at this time, Douglass soon found the appointed rendezvous, in an old stone quarry, and here Douglass, Shields Green, Kagi and Brown sat down to talk over the enterprise. The colored orator vehemently opposed the taking of the arsenal, when that plan was unfolded to him, and, according to his own story, characterized it as assuredly fatal to all engaged. 'It would be an attack upon the federal government, and would array the whole country against us. . . . I told him. . . . that all his arguments, and all his descriptions of the place, convinced me that he was going into a perfect steel trap, and that once in he would never get out alive.' Finally, Douglass said that, as the plan was so completely changed, he should return home, and turning to Shields Green, a negro he had brought from Rochester with him, asked him what he should do. Shields Green promptly answered, 'I b'lieve I'll go wid de ole man.' Brown could not conceal his disappointment at Douglass' defection. 'I will defend you with my life,' he said. 'I want you for a special purpose. When I strike the bees will begin to swarm, and I

the Blue Ridge range of mountains, where in their rocky recesses and along their densely wooded slopes, he would be comparatively safe from pursuit and better able to protect himself from attack; (3) the location at Harper's Ferry of the

shall want you to help me live them.' Douglass' withdrawal subjected him to considerable criticism, not only for his change of mind, but because of the way he withdrew and of what he afterwards said and wrote about the raid." Villard, p. 412.

John Brown now made up his mind that the way to free the slaves was by force. Several of his northern friends, notably Gerrit Smith of New York, gave him money to buy arms, and in June, 1859, Brown and two of his sons rented a farm in the neighborhood of Harper's Ferry, under the name of Smith. His supporters to the number of twenty-two had collected there, part of a regular organization made at a convention of negro sympathizers which met at Chatham, Ontario, in May, 1858, and which framed a constitution, John Brown being elected Commander in Chief of the Army. On Sunday morning, October 16, 1859, the raiders descended on Harper's Ferry, captured the arsenal, made prisoners of prominent citizens, and killed several of them. They kept in possession of the engine house for a couple of days, when they were captured (most of them being wounded or killed) by the United States marines. After Brown's execution his body was taken to North Elba, N. Y., where it was buried.

³ John Brown's band consisted of twenty-one men besides himself, sixteen white and five black. John H. Kagi was adjutant; his three sons, Oliver, Owen and Watson, as well as Aaron D. Stevens, John E. Cook, Charles P. Tidd, William Thompson and Jeremiah G. Anderson, were captains. Edwin Coppoc, Dauphin Thompson, Albert Hazlett, William H. Leeman, were lieutenants. Stewart Taylor, Barclay Coppoc and Francis J. Meriam were privates, as were the negroes Shields Green, Lewis Leary, John Copeland, Osborn Anderson and Dangerfield Newby.

The oldest was Newby, 44; Owen Brown was 35; all the others were under 30. Oliver Brown, Barclay Coppoc and Leeman were under 21. All except Taylor, who was a native of Canada, were born in the United States, and except the negroes, were of old American stock. Only four of them escaped death as the result of the raid. Kagi was shot as he was swimming across the river in an attempt to escape. Oliver and Watson Brown were killed in the fight; Oliver in the engine house and Watson as he was going out with a flag of truce. Stevens and Cook were hanged. William Thompson was shot by Harry Hunter and Chambers after he was taken prisoner. J. G. Anderson was killed in the engine house; Edwin Coppoc was hanged; Dauphin Thompson was killed in the engine house. Hazlett was hanged; Leeman was shot trying to escape across the Potomac; Taylor was killed in the engine house. Green was hanged. Leary was

United States armory and arsenal, in which were always stored many thousand stands of arms without sufficient guard to protect them.

His plan was to make the Blue Ridge Mountains his base of operations and, descending from them at night with his armed marauders, to attack the unprotected villages and isolated farm houses within his reach. The slaves were to be induced to abandon their homes, to be armed and drilled, and, by recruiting his forces in this way, he expected soon to raise a large body of blacks, reinforced by such white men as he could enlist, with which he believed he could maintain himself successfully in the mountains and, by a predatory war, so harass and paralyze the people along the Blue Ridge, that the whole South would become alarmed and slavery be made so insecure that the slaveholders themselves, for their own safety and that of their families, would be compelled to emancipate their negroes. It was, also, a part of his plan to seize the prominent slave owners and hold them prisoners either for the purposes of retaliation or as hostages for the safety of himself and his band, to be ransomed only upon the surrender of a specified number of their slaves, who were to be given their freedom in exchange for that of their masters.

When Brown's party arrived opposite the Ferry at the entrance to the Baltimore and Ohio Railroad bridge over the Potomac, two of the number (Cook and Tidd) were detailed to tear down the telegraph wires, while two more (Kagi and Stevens), crossing the bridge in advance of the others, captured the night watchman. Leaving Watson Brown and

wounded, in the river, and died the same night. Copeland was hanged and Newby was shot, in the armory yard. Of the four that escaped Tidd died of fever a little over two years later, while on a transport going to the seat of war with a Massachusetts regiment as a sergeant; Barclay Coppoc became an officer in a Kansas regiment and was killed in September, 1861, by the fall of a train into the Platte River from a bridge whose supports had been burned away by the Confederates. Meriam died in New York City in November, 1865, after having served under Grant as a captain in a colored regiment, and Osborn Anderson died of consumption in Washington in December, 1872.

Stewart Taylor as guard at the Virginia end of the bridge, and taking old Williams, the watchman, with them, the rest of the company proceeded with Brown and his one-horse wagon to the gate of the United States armory, which was not more than sixty yards distant from the bridge. Finding it locked, they peremptorily ordered the armory watchman, Daniel Whelan, who was on the inner side of the gate, to open it, which he peremptorily refused to do.⁴

Edwin Coppoc and Hazlett were next sent across the street to break into the United States arsenal, which stood within another inclosure and where there was no guard whatever; while, at the same time, Oliver Brown and William Thompson occupied the bridge over the Shenandoah near the arsenal, and Kagi, with Copeland, went up the Shenandoah to the Government rifle works, about half a mile above, where there was another superannuated and unarmed watchman to encounter, whom they likewise captured and took possession of the works.

It was now near midnight. Brown's next step was to dispatch Stevens, Cook and others, six in all, to the country to capture Colonel Lewis W. Washington, a descendant of the family of George Washington, and also to kidnap his negroes. In capturing Colonel Washington, they also seized the historic sword which had been given by Frederick the Great to George Washington, with the memorable words: "From the oldest soldier to the greatest," together with one of a pair of pistols presented by La Fayette to General Washington, and some other valuable arms.⁵ They brought Colonel Washington to Harper's Ferry in his own carriage, and his negroes in his four-horse farm wagon—stopping on their way at the house of another farmer, Mr. Allstadt,⁶ whom they likewise took prisoner, together with his son and men-servants, all of whom were taken under guard to Brown at the armory, arriving there before daylight.

In the meantime, the eastern bound passenger train on the

⁴ Daniel Whalen, p. 752.

⁵ Col. Lewis W. Washington, p. 749.

⁶ John H. Allstadt, p. 757.

Baltimore and Ohio Railroad arrived at the Ferry after midnight, and was detained there until daylight by Brown's orders, his son Watson stopping the train as it approached the station. The passengers were at a loss to comprehend the cause of the delay, supposing it to be a strike of railroad hands. Shephard Hayward, one of the most respectable free negroes in the county, the regular railroad porter, employed to look after the luggage of passengers, went out to call the night watchman, Williams, whose post of duty was on the bridge. Getting no response, he walked out upon the bridge; but he had gotten only a short distance from the entrance when he was confronted by two strange men, who, pointing their guns at him, commanded him to halt. The poor fellow was naturally frightened, and either mistaking the order, or else confused by the suddenness of the summons, turned around to go back to the railroad office, when he was fired upon by Watson Brown and Stewart Taylor, one of their balls inflicting a mortal wound. This was the first victim of the foray and this firing was the first intimation that any of the citizens of the Ferry had—except, of course, the captured watchmen—that there was an enemy in their midst. Several persons living near the bridge were awakened by it, some of them got up and looked out of their windows to ascertain the cause. But as they heard nothing more, and it was too dark to distinguish objects a few feet from them, they concluded that the noise had been occasioned by midnight revelers shooting off their pistols in sport, and they returned to their beds.

But the noise of the shot that killed Hayward awakened Dr. Starry,⁷ who went to his aid and who became the Paul Revere of the day. He roused the people from their slumbers, rode out to the country and as far as the town of Charlestown, eight miles away where there was a militia company, which was soon going by train to the scene. All the morning there was desultory shooting and by noon companies of volunteers had arrived from various points. The raiders in the

⁷ Dr. Starry, p. 742.

iron works had been driven out and killed or captured as they attempted to cross the river and those at the armory had been driven into the engine house—afterwards to be known as John Brown's fort—where they retreated with the most important of their prisoners and barricaded themselves. By two o'clock in the afternoon the town and hills were surrounded with militia and citizens and much firing from both sides was going on. About this time Mr. Beckham, the station agent and Mayor of the town, was killed by a shot from the engine house, though he was not armed himself or engaging in the attack.^a

Towards evening a citizen, Samuel Strider,⁸ tied a handkerchief to his umbrella and delivered a summons to surrender from Col. Baylor of the volunteers. John Brown replied in a note that if he and his men were allowed to depart safely with their arms and prisoners to the other side of the Potomac bridge, they would set the prisoners free there. To which Col. Baylor replied that under no circumstances would he consent to the removal of the citizens across the river. Later, Captain Sinn⁹ of one of the companies went close up to the engine house and being hailed from there he entered and talked with Brown, who was wearing Washington's historical sword. To Captain Sinn, Brown again stated his terms, complaining also that his men bearing flags of truce had been shot down like dogs. To this Captain Sinn replied that men who took up arms that way must expect to be shot down like dogs. John Brown's answer was that he knew what he was to undergo before he came there, he had possession of the town and could have massacred all of the inhabitants; hence, he thought he was entitled to some terms. He insisted that his followers had killed no unarmed man. When told that Mayor Beckham was without any weapons when killed, he expressed regret. They then parted.

It was not alone Dr. Starry that had brought so quickly

^a See *post*, p. 759, 762.

⁸ *Post*, p. 772.

⁹ Sinn, p. 771.

all this outside assistance. At daybreak John Brown had allowed the train which had been seized in the early morning to proceed and at the very next station, Conductor Phelps¹⁰ sent a telegram to the authorities and in a few hours word of the insurrection had reached Washington, and at the order of the President a body of marines was dispatched to Harper's Ferry. The command of the Federal troops was given to Colonel Robert E. Lee,¹¹ who was to become in a few years the great commander of the Confederate armies. They arrived in the morning and Colonel Lee at once sent his aide, J. E. B. Stuart,¹² afterwards the distinguished cavalry leader, to demand the surrender of Brown and his men. The identity of Brown, up to this time known as Smith, was not revealed until he was recognized by Lieut. Stuart, who went to the engine house with a flag of truce. Brown refused to surrender and Lieut. Stuart told him he would come back at daylight for a final answer. The second demand received the same reply and the marines after breaking down the door with a ladder, forced their way into the fort and their leader, Lieutenant Green,^{12a} knocked down and crippled Brown with his sword. Two of the raiders and one marine were killed, and all the raiders taken and their captives rescued.¹³

¹⁰ Conductor Phelps, p. 743.

¹¹ LEE, ROBERT EDWARD. (1806-1870.) Born Stratford, Va. Son of General Harry Lee of the Revolution. The greatest General and Commander-in-Chief of the Army of the Confederacy. He surrendered to General Grant April 9, 1865. Died in Lexington, Va.

¹² STUART, JAMES EWELL BROWN. (1833-1864.) Born Patrick County, Va. Was in command of all the Confederate cavalry at the battle of Bull Run, and commanded at the battle of Beverly Ford. Was made a Brigadier General in 1861, and a Major General in 1862. Was killed in battle near Richmond, May 11, 1864.

^{12a} GREEN, ISRAEL. Entered the marine corps of the United States navy with rank of Second Lieutenant in March, 1847; in May, 1861, was dismissed, having refused to go south, and although a Vermonter, he joined the Confederate marine corps with the rank of Major and Adjutant at its organization in March, 1861, serving through the war in that position. He died in Mitchell S. D. in 1909, in his 86th year.

¹³ Those killed by the raiders numbered five, viz: Beckham, Boerley, Quinn, Hayward and Turner; the wounded were nine: Dorsey, Hammond, Hooper, Murphy, McCabe, Richardson, Rupert, Young and Woollet.

Brown was carried to the office of the armory paymaster where, lying on the floor, he was questioned by Governor Wise,¹⁴ Senator Mason¹⁵ and Clement L. Vallandigham of Ohio.¹⁶ To all he took the entire responsibility on himself; refused to involve his northern admirers and financial backers, and called himself "an instrument in the hands of Providence."¹⁷ On Wednesday, he with the other captives, Stevens, Coppoc and the negroes Copeland and Green, were removed to the county jail at Charlestown. After a preliminary examination before the magistrates, the raiders were indicted for treason, inducing slaves to rebel and murder.

The trial began on October 21, before Judge Richard Parker of that circuit. John Brown was tried first, and three able Virginia attorneys were assigned as his counsel, Charles J. Faulkner,¹⁸ afterwards United States minister to France, Lawson Botts and Thomas C. Green, Mayor of Charlestown and afterwards a Judge of the Supreme Court of West Virginia. Brown asked a postponement in a vigorous speech on the ground of his physical condition, but the medical testimony showed that his wounds were not serious, and although he lay on a cot during most of the trial, it is clear that this was more with the view of creating sympathy than from necessity. The jury having been selected, his counsel asked time to investigate Brown's sanity, but this the prisoner indignantly rejected and the Court ruled that as there was no

¹⁴ WISE, HENRY ALEXANDER. (1806-1876.) Born Drummond-town, Va. Representative in United States Congress, 1833-1845; U. S. Minister to Brazil, 1847. Governor of Virginia, 1856-1860. Brigadier General in the Confederate service and in command at the battle of Roanoke Island. Author of "Seven Decades of the Union," "Memoir of John Tyler." Died in Richmond.

¹⁵ MASON, JAMES MURRAY. (1793-1871.) Born Mason's Island, Va. Member Virginia House of Delegates, 1826-1830. Presidential Elector, 1833. Member from Virginia of United States House of Representatives, 1837-1839. United States Senator, 1845-1861. Died in Alexandria, Va.

¹⁶ See 1 Am. St. Tr. 703.

¹⁷ *Post*, p. 711.

¹⁸ Mr. Faulkner withdrew after the preliminary examination and was succeeded by Mr. Green.

evidence of unsanity the trial must proceed. The witnesses for the Commonwealth proved the facts of the raid, the killing of the victims and the plan of the insurrection. On the third day of the trial, a young man named Hoyt rose and stated that he was a Boston lawyer and had been sent to defend him. The Commonwealth attorneys objected, as they had well founded suspicions that he was a spy,¹⁹ but the court allowed his claim. About this time Brown having declared that he had no confidence in his appointed counsel, Messrs. Botts and Green withdrew from the case, being succeeded by Samuel Chilton of Washington and Hiram Griswold of Cleveland, who had been sent to defend him by leading northern Abolitionists.

The main defense which seems to have been suggested by Brown to his counsel was that Brown had treated his prisoners with kindness, which drew from Mr. Hunter, one of the prosecutors, the caustic and truthful comment that testimony to show Brown's forbearance in not shooting other citizens had no more to do with the case than the dead languages. Mr. Chilton made a technical objection to the indictment which the Judge overruled. The lawyers addressed the jury at some length, and they returned into court in a few minutes with a verdict of guilty on all the counts of the indictment. Twenty-four hours later Judge Parker sentenced him to be hanged. His counsel made an appeal to the Supreme Court of Virginia, but without success, and John Brown was hanged in a field near Charlestown on December 2, 1859.

THE TRIAL.²⁰

In the Circuit Court of Jefferson County, Charlestown, Virginia, October, 1859.

HON. RICHARD PARKER,²¹ *Judge.*

¹⁹ See *post*, p. 753.

²⁰ *Bibliography.* **"The Life, Trial and Conviction of Captain John Brown, known as 'Old Brown of Ossawatimie,' with a Full Account of the Attempted Insurrection at Harper's Ferry. Compiled from Official and Authentic Sources. New York: Robert M. DeWitt, publisher, 160 and 162 Nassau street."*

October 25.

The preliminary examination (which preceded that in the Circuit Court) of John Brown and his men began today at 10 a. m. in the Magistrate's Court at Charlestown, before COLONEL BRAXTON DAVENPORT and his associate magistrates.²² At half-past ten o'clock the sheriff was directed to bring in the prisoners, who were conducted from the jail under a guard

*"The John Brown Invasion. An Authentic History of the Harper's Ferry Tragedy, with Full Details of the Capture, Trial and Execution of the Invaders, and of all the Incidents Connected Therewith. Boston: Published by James Campbell, 1860."

*"Remarkable Trials of All Countries." New York, 1878. See 1 Am. St. Tr. 457.

*"The Public Life of Captain John Brown. By James Redpath. Boston: Taylor & Eldredge. 1860."

"Mason Report of the Select Committee of the Senate on the Harper's Ferry Invasion, 36th Congress, 1st Session."

*"John Brown. A Biography Fifty Years After. By Oswald Garrison Villard. Boston and New York: Houghton Mifflin Co., 1910."

"The Trial and Execution of John Brown. American Historical Association Papers. Vol. 4."

"John Brown, Soldier of Fortune. By Hill Peeble Wilson. Lawrence, Kan. 1913."

Among a number of magazine articles and monographs by persons who witnessed the raid and the trial, are "John Brown's Raid; How I got Into It and How I got Out of It," John G. Rosengarten, *Atlantic Monthly*, June, 1865. "John Brown at Harper's Ferry, the Fight at the Engine House, as Seen by one of his Prisoners," John E. P. Daingerfield, *The Century*, June, 1885. "Recollections of the John Brown Raid," Alexander R. Boteler, *The Century*, July, 1885. "The Capture of John Brown," Israel Green, *North American Review*, December, 1885. "The Raid of John Brown at Harper's Ferry as I Saw It." By Samuel Vanderlip Leech, D.D. Published by the Author. The De Soto, Washington, D. C. 1909." "The Trial of John Brown," George E. Caskie, *American Law Review*, May-June, 1910. "The Trial of John Brown," Richard Parker (the Judge who presided), *St. Louis Globe-Democrat*, April 8, 1888.

²¹ PARKER, RICHARD. (1809-1893.) Graduated University of Virginia. Representative in Congress, 1849. Circuit Judge, 1851. During the Reconstruction Period he was forced to retire from the Bench by the Federal military authorities, and opened a law school in Winchester, Va., where he died. Until a few years before his death he was in active practice, and was one of the leading lawyers of the state. Judge Parker came of a long line of high judicial officers. His great grandfather was a Virginia judge until his death in 1813; he had five sons, one of whom, his namesake, was conspicuous at the

of eighty armed men. A guard was also stationed around the court. The court house was bristling with bayonets on all sides.

John Brown, who was manacled to Edwin Coppoc, seemed weak and his eyes were swollen from wounds on his head. Stevens also appeared to be badly wounded.

Charles B. Harding, County Attorney, and *Andrew Hunter* represented the Commonwealth of Virginia.

In the afternoon of the day he was taken prisoner, Senator Mason, Lieutenant Stuart, Colonel Faulkner, M. C. and Clement L. Vallandigham had an interview with Brown at the office of the Paymaster of the Armory, where he had been removed from the engine house. A verbatim report was made of this by one who was present, as follows:

Mr. Mason. Can you tell us, at least, who furnished money for your expedition? *Brown.* I furnished most of it myself. I cannot implicate others. It is by my own folly that I have been taken. I could easily have saved myself from it had I exercised my own better judgment, rather than yielded to my feelings.

Mr. Mason. You mean if you had escaped immediately? *Brown.* No; I had the means to make myself secure without any escape, but I allowed myself to be surrounded by a force by being too tardy.

Mr. Mason. Tardy in getting away? *Brown.* I should have gone away, but I had thirty odd prisoners, whose wives and daughters were in tears for their safety, and I felt for them. Besides, I wanted to allay the fears of those who believed we came here to burn and kill. For this reason I allowed the train to cross the bridge, and gave them full liberty to pass on. I did it only to spare the feelings of those passengers and their families, and to allay the apprehensions

siege of Charlestown, and is mentioned in Light Horse Harry Lee's memoirs. Another son, William Parker, was a farmer, and that is the only break in four generations of judges. Richard Elliot Parker, son of Farmer William Parker and father of the man who tried John Brown, was appointed judge of the General Court in the Norfolk circuit in 1817. He presided until 1831, when he moved to the Shenandoah Valley and settled in Winchester. In 1836 he was elected a United States Senator, but not taking kindly to political life, when a vacancy occurred in the Supreme Court of Appeals, the highest judicial body of Virginia, he accepted it and held it until his death.

²² They were Dr. Alexander, John J. Lock, John F. Smith, Thos. H. Willis, George W. Eichelberger, Charles H. Lewis, and Moses W. Burr.

that you had got here in your vicinity a band of men who had no regard for life and property, nor any feeling of humanity.

Mr. Mason. But you killed some people passing along the streets quietly. *Brown.* Well, sir, if there was anything of that kind done, it was without my knowledge. Your own citizens, who were my prisoners, will tell you that every possible means were taken to prevent it. I did not allow my men to fire, nor even to return a fire, when there was danger of killing those we regarded as innocent persons, if I could help it. They will tell you that we allowed ourselves to be fired at repeatedly and did not return it.

A Bystander. That is not so. You killed an unarmed man at the corner of the house over there (at the water tank) and another besides. *Brown.* See here, my friend, it is useless to dispute or contradict the report of your own neighbors who were my prisoners.

Mr. Mason. If you would tell us who sent you here—who provided the means—that would be information of some value. *Brown.* I will answer freely and faithfully about what concerns myself—I will answer anything I can with honor, but not about others.

Mr. Vallandigham. Mr. Brown, who sent you here? *Brown.* No man sent me here; it was my own prompting and that of my Maker, or that of the devil, which ever you please to ascribe it to. I acknowledge no man in human form.

Mr. Vallandigham. Did you get up the expedition yourself? *Brown.* I did.

Mr. Vallandigham. Did you get up this document that is called a constitution? *Brown.* I did. They are a constitution and ordinances of my own contriving and getting up.

Mr. Vallandigham. How long have you been engaged in this business? *Brown.* From the breaking of the difficulties in Kansas. Four of my sons had gone there to settle, and they induced me to go. I did not go there to settle, but because of the difficulties.

Mr. Mason. How many are engaged with you in this movement? I ask those questions for our own safety. *Brown.* Any questions that I can honorably answer I will, not otherwise. So far as I am myself concerned I have told everything truthfully. I value my word, sir.

Mr. Mason. What was your object in coming? *Brown.* We came to free the slaves, and only that.

A Volunteer. How many men in all had you? *Brown.* I came to Virginia with eighteen men only, besides myself.

A Volunteer. What in the world did you suppose you could do here in Virginia with that amount of men? *Brown.* Young man, I don't wish to discuss that question here.

A Volunteer. You could not do anything. *Brown.* Well, perhaps your ideas and mine on military subjects would differ materially.

Mr. Mason. How do you justify your acts? *Brown.* I think, my friend, you are guilty of a great wrong against God and humanity—I say it without wishing to be offensive—and it would be perfectly right in any one to interfere with you so far as to free those you wilfully and wickedly hold in bondage. I do not say this insultingly. I

think I did right, and that others will do right who interfere with you at any time and all times. I hold that the golden rule, "Do unto others as you would that others should do unto you," applies to all who would help others to gain their liberty.

Lieut. Stuart. But you don't believe in the Bible. *Brown.* Certainly I do.

Mr. Vallandigham. Where did your men come from? Did some of them come from Ohio? *Brown.* Some of them.

Mr. Vallandigham. From the Western Reserve? None came from Southern Ohio? *Brown.* Yes, I believe one came from below Steubenville, down not far from Wheeling.

Mr. Vallandigham. Have you been in Ohio this summer? *Brown.* Yes, sir. I passed through to Pittsburg on my way in June.

Mr. Mason. Did you consider this a military organization, in this paper (your constitution)? I have not yet read it. *Brown.* I did in some sense. I wish you would give that paper close attention.

Mr. Mason. You considered yourself the Commander-in-chief of these "provisional" military forces? *Brown.* I was chosen agreeably to the ordinance of a certain document, Commander-in-chief of that force.

Mr. Vallandigham. When in Cleveland did you attend the Fugitive Slave Law Convention there? *Brown.* No. I was there about the time of the sitting of the court to try the Oberlin rescuers. I spoke there publicly on that subject. I spoke on the Fugitive Slave law and my own rescue. Of course, so far as I had any influence at all, I was disposed to justify the Oberlin people for rescuing the slave, because I have myself forcibly taken slaves from bondage. I was concerned in taking eleven slaves from Missouri to Canada last winter. I think I spoke in Cleveland before the convention. I do not know that I had any conversation with any of the Oberlin rescuers. I was sick part of the time I was in Ohio, with ague. I was part of the time in Ashtabula County.

Mr. Vallandigham. Did you see anything of Joshua R. Giddings there? *Brown.* I did meet him.

Mr. Vallandigham. Did you converse with him? *Brown.* I did. I would not tell you, of course, anything that would implicate Mr. Giddings; but I certainly met with him and had conversation with him.

A Bystander. Did you go out to Kansas under the auspices of the Emigrant Aid Society? *Brown.* No, sir; I went out under the auspices of John Brown and nobody else.

Mr. Vallandigham. Will you answer this: Did you talk with Giddings about your expedition here? *Brown.* No, I won't answer that; because a denial of it I would not make, and to make any affirmation of it I should be a great dunce.

Mr. Vallandigham. Have you had any correspondence with parties at the North on the subject of this movement? *Brown.* I have had correspondence.

A Bystander. Do you considered this a religious movement? *Brown.* It is, in my opinion, the greatest service a man can render to God.

A Bystander. Do you consider yourself an instrument in the hands of Providence? *Brown.* I do.

A Bystander. Upon what principle do you justify your acts? *Brown.* Upon the golden rule. I pity the poor in bondage that have none to help them; that is why I am here; not to gratify any personal animosity, revenge or vindictive spirit. It is my sympathy with the oppressed and the wronged, that are as good as you and as precious in the sight of God.

A Bystander. Certainly; but why take the slaves against their will? *Brown.* I never did.

A Bystander. You did in one instance, at least.

Stevens, the wounded prisoner, here said, You are right. In one case I know the negro wanted to go back.

Mr. Vallandigham. Who are your advisers in this movement?

Brown. I cannot answer that. I have numerous sympathizers throughout the entire North.

A Bystander. Did you ever live in Washington City? *Brown.* I did not. I want you to understand, gentlemen (and, to the reporter of the *Herald*) you may report that—I want you to understand that I respect the rights of the poorest and weakest of colored people, oppressed by the slave system, just as much as I do those of the most wealthy and powerful. That is the idea that has moved me, and that alone. We expect no reward, except the satisfaction of endeavoring to do for those in distress and greatly oppressed, as we would be done by. The cry of distress of the oppressed is my reason, and the only thing that prompted me to come here.

A Bystander. Why did you do it secretly? *Brown.* Because I thought that necessary to success; no other reason.

A Bystander. And you think that honorable? Have you read Gerrit Smith's last letter? *Brown.* What letter do you mean?

A Bystander. The New York *Herald* of yesterday, in speaking of this affair, mentions a letter in this way: "Apropos of this exciting news, we recollect a very significant passage in one of Gerrit Smith's letters, published a month or two ago, in which he speaks of the folly of attempting to strike the shackles off the slaves by the force of moral suasion or legal agitation, and predicts that the next movement made in the direction of negro emancipation would be an insurrection in the South." *Brown.* I have not seen the New York *Herald* for some days past; but I presume, from your remarks about the gist of the letter, that I should concur with it. I agree with Mr. Smith that moral suasion is hopeless. I don't think the people of the slave states will ever consider the subject of slavery in its true light till some other argument is resorted to than moral suasion.

Mr. Vallandigham. Did you expect a general rising of the slaves in case of your success? *Brown.* No, sir; nor did I wish it. I expected to gather them up from time to time and set them free.

Mr. Vallandigham. Did you expect to hold possession here till then? *Brown.* Well, probably I had quite a different idea. I do not know that I ought to reveal my plans. I am here a prisoner and wounded, because I foolishly allowed myself to be so. You overrate

your strength in supposing I could have been taken if I had not allowed it. I was too tardy after commencing the open attack—in delaying my movements through Monday night, and up to the time I was attacked by the government troops. It was all occasioned by my desire to spare the feelings of my prisoners and their families and the community at large. I had no knowledge of the shooting of the negro Hayward.

Mr. Vallandigham. What time did you commence your organization in Canada? *Brown.* That occurred about two years ago, if I remember right. It was, I think, in 1858.

Mr. Vallandigham. Who was the secretary? *Brown.* That I would not tell if I recollected, but I do not recollect. I think the officers were elected in May, 1858. I may answer incorrectly, but not intentionally. My head is a little confused by wounds, and my memory obscure on dates, etc.

Dr. Biggs. Were you in the party at Dr. Kennedy's house? *Brown.* I was at the head of that party. I occupied the house to mature my plans. I have not been in Baltimore to purchase caps.

Dr. Biggs. Who lanced that woman's neck on the hill? *Brown.* I did. I have sometimes practiced in surgery when I thought it a matter of humanity and necessity, and there was no one else to do it, but have not studied surgery.

Dr. Biggs. It was done very well and scientifically. They have been very clever to the neighbors, I have been told, and we had no reason to suspect them except that we could not understand their movements. They were represented as eight or nine persons; on Friday there were thirteen. *Brown.* There were more than that.

Dr. Biggs. Where did you get arms to obtain possession of the armory? *Brown.* I bought them; two hundred Sharp's rifles and two hundred revolvers—what is called the Massachusetts Arms Company's revolvers, a little under the navy size.

Reporter of the Herald. I do not wish to annoy you; but if you have anything further you would say I will report it. *Brown.* I have nothing to say, only that I claim to be here carrying out a measure I believe perfectly justifiable, and not to act the part of an incendiary or ruffian, but to aid those suffering great wrong. I wish to say, furthermore, that you had better—all you people at the South—prepare yourselves for a settlement of that question that must come up for settlement sooner than you are prepared for. The sooner you are prepared the better. You may dispose of me very easily; I am nearly disposed of now; but this question is still to be settled—this negro question I mean—the end of that is not yet. These wounds were inflicted upon me—both sabre cuts on my head and bayonet stabs in different parts of my body—some minutes after I had ceased fighting and had consented to a surrender, for the benefit of others, not for my own. I believe the major (meaning Lieut. J. E. B. Stuart, of the United States cavalry) would not have been alive; I could have killed him just as easy as a mosquito when he came in, but I supposed he came in only to receive our surrender. There had been loud and long calls of surrender from us—as

loud as men could yell—but in the confusion and excitement, I suppose we were not heard. I do not think the major, or any one, meant to butcher us after we had surrendered.

An *Officer* here stated that the order to the marines were not to shoot anybody; but when they were fired upon by Brown's men and one of them killed, they were obliged to return the compliment. *Brown* insisted that the marines fired first.

An *Officer*. Why did not you surrender before the attack? *Brown*. I did not think it was my duty or interest to do so. We assured the prisoners that we did not wish to harm them, and they should be set at liberty. I exercised my best judgment, not believing the people would wantonly sacrifice their own fellow citizens, when we offered to let them go on condition of being allowed to change our position about a quarter of a mile. The prisoners agreed by vote among themselves to pass across the bridge with us. We wanted them only as a sort of guaranty of our own safety; that we should not be fired into. We took them in the first place as hostages and to keep them from doing any harm. We did kill some men in defending ourselves, but I saw no one fire except directly in self defense. Our orders were strict not to harm any one not in arms against us.

A *Bystander*. Brown, suppose you had every nigger in the United States, what would you do with them? *Brown*. Set them free.

A *Bystander*. To set them free would sacrifice the life of every man in this community. *Brown*. I do not think so.

A *Bystander*. I know it. I think you are fanatical. *Brown*. And I think you are fanatical. "Whom the gods would destroy they first make mad," and you are mad.

A *Bystander*. Was it your only object to free the negroes? *Brown*. Absolutely our only object.

A *Bystander*. But you demanded and took Col. Washington's silver and watch? *Brown*. Yes; we intended freely to appropriate the property of slaveholders to carry out our object. It was for that, and only that, and with no design to enrich ourselves with any plunder whatever.

A *Bystander*. Did you know Sherrod in Kansas? I understand you killed him. *Brown*. I killed no man except in fair fight; I fought at Black Jack Point and Ossawatomie, and if I killed anybody it was at one of those places.

Sheriff Campbell read the commitment of the prisoners, who were charged with treason and murder.^{22a}

^{22a} The following is the commitment and the warrant to the sheriff to summon eight justices to examine the facts:

State of Virginia, Jefferson County, to-wit: To the sheriff, Court, and to the keeper of the jail of said county. These are to command you, in the name of the Commonwealth of Virginia, forthwith to convey and deliver into the custody of the keeper of said jail, and to receive and safely keep the bodies of John Brown, Aaron C. Ste-

Mr. Harding asked that the Court might assign counsel for the prisoners, if they had none.

The COURT inquired if the prisoners had counsel.

John Brown. I did not ask for any quarter at the time I was taken. I did not ask to have my life spared. The Governor of the State of Virginia tended me his assurance that I should

phens, Edwin Coppie, Shields Green and John Copland, negro, and charged before me, Roger Chew, a justice of the peace for said county, on the oaths of Henry A. Wise, Andrew Hunter and John W. McGinnis, and upon the free admission and confession of said parties made in my presence and hearing, that they and each of them did feloniously conspire with each other and with other parties unknown, to make an abolition insurrection and open war against the Commonwealth of Virginia, by making an armed attack upon and murdering her citizens at a certain place called Harper's Ferry, and then and there to riot on the 17th, 18th and 19th days of October, 1859, and did feloniously and of their malice kill and murder, with firearms called Sharpe's rifles, and revolvers, and pistols, divers citizens of this Commonwealth, and Fontaine Beekham, George W. Turner and Thomas Boerly, free white persons, and Luke Quinn, a soldier of the United States Government, and also Hayward Sheppard, a free negro, and did there and then, feloniously conspire with divers slaves, belonging to citizens of this Commonwealth, in the county aforesaid, to me unknown, to rebel and make insurrection against the government and laws of this Commonwealth, that they may be examined for the said offense before the proper examining court, and otherwise dealt with according to law.

Given under my hand and seal this 20th day of October, 1859.

Signed,
Roger Chew.

To the Sheriff of Jefferson County, Virginia: Whereas John Brown, Aaron C. Stephens and Edwin Coppie, white persons, and Shields Green and John Copland, men of color, have been committed by my warrant within and for certain felonies charged to have been committed as therein stated by them, and being of opinion that there is sufficient cause for charging said parties with said offenses, I command you, in the name of the Commonwealth, to summon at least eight of the justices of said county to meet at the court house of said county, on the 25th day of this month, October, 1859, to hold a court for the examination of the facts with which said parties stand charged, and for such other purposes concerning the premises as are required by law, and have then there this warrant and make return how you have effected the same.

Given under my hand and seal this 20th day of October, 1859.

Roger Chew.

have a fair trial; and under no circumstances whatever will I be able to have a fair trial. If you seek my blood, you can have it at any moment, without this mockery of a trial. I have had no counsel. I have not been able to advise with any one. I know nothing about the feelings of my fellow prisoners, and am utterly unable to attend in any way to my own defense. My memory don't serve me. My health is insufficient, although improving. There are mitigating circumstances that I would urge in our favor, if a fair trial is to be allowed us. But if we are to be forced with a mere form—a trial for execution—you might spare yourselves that trouble. I am ready for my fate. I do not ask a trial. I beg for no mockery of a trial—no insult—nothing but that which conscience gives, or cowardice would drive you to practice. I ask again to be excused from the mockery of a trial. I do not even know what the special design of this examination is. I do not know what is to be the benefit of it to the Commonwealth. I have now little further to ask, other than that I may not be foolishly insulted only as cowardly barbarians insult those who fall into their power.

The Magistrates assigned *Charles J. Faulkner*²³ and *Lawson Botts*²⁴ as counsel for the prisoners.

²³ FAULKNER, CHARLES JAMES. (1806-1884.) Born Martinsburg, Va. Graduated Georgetown University, 1822. Member state house of delegates, 1832-1833; commissioner in the Virginia-Maryland boundary dispute; State Senator, 1841-1844, but resigned in a year's time; again elected to Assembly in 1848. Member of State Constitutional Convention, 1850. Elected to Congress, 1851 and to two succeeding Congresses. Appointed Minister to France, 1859. Returned to United States in 1861 and was Stonewall Jackson's Chief of Staff. Member West Virginia Constitutional Convention, 1872, and elected as a Democrat from that state to 44th Congress 1875-1877. Died in Boydville, W. Va. See Tyler Encyc. Va. Biog. 1913, III 140; Norris Hist. Lower Shenandoah Valley.

Mr. Faulkner asked to be relieved of the appointment because of John Brown's criticisms and because of having been one of those who helped to defeat the raid. He had also he said freely expressed his opinion of the raiders and their deserts and had at this time important professional engagements elsewhere. But at the request of the judge, he served during the preliminary examination; after that he withdrew (Mr. Green taking his place) to bear further witness later that he had never in the course of his professional career,

Mr. Faulkner. I was about to remark to the Court that, although I feel at any time willing to discharge any duty which the Court can legally claim, and by authority of law devolve upon me, I am not aware of any authority which this Court has, sitting as an Examining Court, to assign counsel for the defense. Besides, it is manifest from the remarks just made by one of the prisoners, that he regards the appearance of counsel under such circumstances not as a *bona fide* act, but rather as a mockery. Under these circumstances, I do not feel disposed to assume the responsibility of that position. I have other reasons for declining the position, connected with my having been at the place of action, and hearing all the admissions of the prisoners, which render it improper and inexpedient for me to act as counsel. If the Court had authority to order it peremptorily, I should acquiesce, and obey that authority. I am not aware that there is any such power vested in this Court, but, as it is the prisoners' desire, I will see that full justice is done them.

Mr. Botts said he did not feel it to be his duty to decline the appointment of the Court. He was prepared to do his best to defend the prisoners, and he hoped the Court would assign some experienced assistant in case *Mr. Faulkner* persisted in his declination.

Mr. Harding addressed *John Brown* and asked him if he was willing to accept Messrs. Faulkner and Botts as his counsel.

John Brown. I wish to say that I have sent for counsel. I did apply, through the advice of some persons here, to some persons whose names I do not now recollect, to act as counsel for me, and I have sent for other counsel, who have had no possible opportunity to see me. I wish for counsel if I am to have a trial; but if I am to have nothing but the mockery

"witnessed an examination which was entered upon and conducted with more deliberation and decorum and with more sacred regard to all the requirements which the humane system of our criminal laws throws around the life and liberty of the accused, than was extended to those wicked disturbers of the peace." Villard, p. 483.

²⁴ See *post*, p. 728.

of a trial, as I have said, I do not care anything about counsel. It is unnecessary to trouble any gentleman with that duty.

Mr. Harding. You are to have a fair trial.

John Brown. There were certain men—I think Mr. Botts was one of them—who declined acting as counsel, but I am not positive about it. I cannot remember whether he was one, because I have heard so many names. I am a stranger here; I do not know the disposition or character of the gentlemen named. I have applied for counsel of my own, and doubtless could have them, if I am not, as I said before, to be hurried to execution before they can reach me. But if that is the disposition that is to be made of me, all this trouble and expense can be saved.

Mr. Harding. The question is, do you desire the aid of Messrs. Faulkner and Botts as your counsel? Please to answer yes or no.

John Brown. I cannot regard this as an examination, under any circumstances. I would prefer that they should exercise their own pleasure. I feel as if it were a matter of very little account to me. If they had designed to assist me as counsel, I should have wanted an opportunity to consult them at my leisure.

Mr. Harding. Stevens, are you willing those gentlemen should act as your counsel?

Stevens. I am willing that gentleman shall (pointing to Mr. Botts).

Mr. Harding. Do you object to Mr. Faulkner?

Stevens. No. I am willing to take both.

Mr. Harding addressed each of the other prisoners separately, and each stated his willingness to be defended by the counsel named.

The Court issued a peremptory order that the press should not publish detailed testimony, as it would render the getting of a jury before the Circuit Court impossible.

The following witnesses were then examined: A. M. Ketz-miller, John Allstadt, Alexander Kelly, William Johnson, Andrew Kennedy, Joseph A. Bruce and Colonel Lewis W.

Washington.²⁵ The BENCH thereupon entered the following order on the minutes: "Sundry witnesses were examined and the Court being unanimously of the opinion that the prisoners are guilty of the offense with which they stand charged, it is ordered and commanded by the Court that they be sent on to the Circuit Court of the County for trial according to law."²⁶

The CIRCUIT COURT opened at two o'clock. The magistrates report being presented to the JUDGE, he proceeded to charge the *Grand Jury*. Having been advised of a plot to lynch the prisoners, he added to his charge a warning against any such conduct, which he declared would be disgraceful to the State and nothing less than murder, for which its perpetrators might themselves incur the extreme penalty of the law.²⁷

²⁵ See their evidence in the Circuit Court, *post*.

²⁶ Villard, p. 486.

²⁷ Gentlemen of the Jury: In the state of excitement into which our whole community has been thrown by the recent occurrences in this county, I feel that the charge which I usually deliver to a Grand Jury would be entirely out of place. Those occurrences cannot but force themselves upon your attention. They must necessarily occupy a considerable portion of that time which you will devote to your public duties as a Grand Jury. However guilty the unfortunate men who are now in the hands of justice may prove to be, still they cannot be called upon to answer to the offended laws of our Commonwealth for any of the multifarious crimes which they are charged, until the Grand Jury after diligent inquiry, shall decide that for these offenses they be put upon their trial. I will not permit myself to give expression to any of those feelings which at once spring up in every breast when reflection upon the enormity of the guilt in which those are involved who invade by force a peaceful unsuspecting portion of our common country, raise the standard of insurrection amongst them and shoot down without mercy Virginia citizens, defending Virginia soil against their invasion. I must remember, gentlemen, that as a minister of justice, bound to execute with you the laws faithfully, and in the very spirit of justice herself, I must, as to every one accused of crime, hold, as the law holds, that he is innocent until he shall be proved guilty by an honest, independent and impartial jury of his countrymen; and what is obligatory upon me is equally binding upon every one who may be connected with the prosecution and trials of these offenders. In these cases, as in all others, you will be controlled by that oath which each of you have taken, and in which you have solemnly

The *Grand Jury* retired with the witnesses for the State. At five o'clock they returned into court and stated that they had not finished the examination of witnesses, and they were discharged until ten o'clock next morning.

sworn that you will diligently inquire into all offenses which may be brought to your knowledge, and that you will present no one through ill will, as well as that you will leave no one unindicted through fear or favor; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth. Do but this, gentlemen, and you will have but fulfilled your duty. Go beyond this, and in place of that diligent inquiry and calm investigation which you have sworn to make, act upon prejudice or from excitement of passion, and you will have done a wrong to that law in whose services you are engaged. As I before said, those men are now in the hands of justice. They are to have a fair and impartial trial. We owe it to the cause of justice as well as to our own characters, that such a trial should be afforded them. If guilty, they will be sure to pay the extreme penalty of their guilt, and the example of punishment, when thus inflicted by virtue of law, will be, beyond all comparison, more efficacious for our protection than any torture to which mere passion could subject them. Whether they be in public or private position, let each one of us remember that as the law has charge of these alleged offenders, the law alone, through its recognized agents, must deal with them to the last. It can tolerate no interference by others with duties it has assumed to itself. If true to herself, and she will be, our Commonwealth, through her courts of justice, will be as ready to punish the offense of such interference as she is to punish these grave and serious offenses with which she is now about to deal, in case these offenses be proved by legal testimony to have been perpetrated. Let us all, gentlemen, bear this in mind, and in patience await the result, confident that that result will be whatever strict and impartial justice shall determine to be necessary and proper. It would seem, gentlemen, and yet I speak from no evidence, but upon vague rumors which have reached me, that these men who have lately thrown themselves upon us confidently expected to be joined by our slaves and free negroes, and unfurled the banner of insurrection and invited this class of our citizens to rally under it, and yet, as I am told, they were unable to obtain a single recruit.

"The term at which this trial was had commenced at Charlestown, the county seat of Jefferson, on Thursday, the 20th day of October, 1859. At that time John Brown, Aaron C. Stevens, Edwin Coppie, white men, and Green and Copeland, negroes, were lying in jail, but as they had not been taken before an Examining Court, as our law then made necessary, their trials could not be begun at once. Because of this I had not intended in the charge which I was required to give to the Grand Jury to refer to the invasion of the State and the acts of violence attending it, but just as I was about going to

October 26.

Today, the *Grand Jury* brought into Court a bill of indictment against *John Brown*, *Aaron C. Stevens*, *Edwin Coppoc* (white) and *Shields Green* and *John Copcland* (free negroes) for: 1st. Confederating to make rebellion and levy war against Virginia and to effect this purpose seizing Harper's Ferry within the jurisdiction of the State; capturing divers good and loyal citizens and slaying and murdering certain others and establishing a government hostile to the govern-

the court house I was informed by the Hon. Robert Y. Conrad, a gentleman of the highest character and the coolest temperament, that an engagement had been entered into by numerous persons of the county not to submit to the delay, and what they called the chances of a trial, but to take the matter into their own hands, seize the prisoners by force, and themselves execute them. Being reluctantly convinced that this was so, I at once added to the charge I had written a warning against such conduct, declaring it would be an outrage which would bring disgrace on our State and people, and if carried out it would be a case of murder, for which its perpetrators and those abetting it might incur the extreme penalties of the law. This part of the charge was eagerly seized on by the many reporters of the press, who were present from nearly all portions of the Union, and was immediately published in the various papers.

"As might have been expected, the bold, unprovoked attack made by Brown and his party, and their subsequent misconduct, had raised so great an excitement that very little of the court business could be proceeded with, and scarce any preparation had been made to dispose of it. For a few days, therefore, I was comparatively at leisure and I availed myself of it to ascertain what was the feeling as to the prisoners. To do this I readily threw myself in the way of persons whom I knew, and in a short time they would advert to the acts and doings of the Brown party. This gave me the opportunity to mention what I had been told of a purpose to take the accused out of the custody of the law and put them to death, without judge or jury, and to speak calmly, yet distinctly, of the reproach which would therefrom attach to our people; that if, as some believed, Brown and his men were the tools of a few extreme abolitionists, what was proposed would be playing into their hands, and that they who engaged in or advised such a course, would be exposing themselves to trial and punishment for murder. To my surprise, more than one of the steadiest and most influential men of the county admitted that they had favored such action, and expressed themselves as truly glad they had had this conversation, for they would now use all the influence they possessed to allay the excitement, and leave the whole matter to be disposed of by the law." Judge Parker's "Recollections," *St. Louis Globe-Democrat*, ante, p. 710.

ment of the State, and exercising offices under it and compelling obedience to it, and resisting the laws of Virginia. 2nd. Conspiring to induce certain slaves of Lewis W. Washington and John H. Allstadt to make rebellion and insurrection. 3rd and 4th. Committing murder upon Thomas Boerly, George W. Turner, Fontaine Beckham and Luke Quinn, white persons, and Shephard Hayward, a free negro.²⁸

²⁸ Judicial Circuit of Virginia, Jefferson County, to-wit: The Jurors of the Commonwealth of Virginia, in and for the body of the County of Jefferson, duly impanelled, and attending upon the Circuit Court of said county, upon their oaths do present that John Brown, Aaron C. Stephens, alias Aaron D. Stephens, and Edwin Cope, white men, and Shields Green and John Copland, free negroes, together with divers other evil-minded and traitorous persons to the jurors unknown, not having the fear of God before their eyes, but being moved and seduced by the false and malignant counsel of other evil and traitorous persons and the instigations of the devil, did severally, on the sixteenth, seventeenth, and eighteenth days of the month of October, in the year of our Lord eighteen hundred and fifty-nine, and on divers other days before and after that time, within the Commonwealth of Virginia, and the County of Jefferson aforesaid, and within the jurisdiction of this Court, with other confederates to the jurors unknown, feloniously and traitorously make rebellion and levy war against the said Commonwealth of Virginia, and to effect, carry out, and fulfil their said wicked and treasonable ends and purposes did, then and there, as a band of organized soldiers, attack, seize, and hold a certain part and place within the county and State aforesaid, and within the jurisdiction aforesaid, known and called by the name of Harper's Ferry, and then and there did forcibly capture, make prisoners of and detain divers good and loyal citizens of said Commonwealth, to-wit: Lewis W. Washington, John M. Allstadt, Archibald M. Kitzmiller, Benjamin J. Mills, John E. P. Dangerfield, Armstead Ball, John Donoho, and did then and there slay and murder, by shooting with fire arms, called Sharpe's rifles, divers good and loyal citizens of said Commonwealth, to-wit: Thomas Boerly, George W. Turner, Fontaine Beckham, together with Luke Quinn a soldier of the United States, and Hayward Sheppard, a free negro, and did then and there, in manner aforesaid, wound divers other good and loyal citizens of said Commonwealth, and did then and there feloniously and traitorously establish and set up, without authority of the Legislature of the Commonwealth of Virginia, a Government separate from, and hostile to, the existing Government of said Commonwealth; and did then and there hold and exercise divers offices under said usurped Government, to-wit: the said John Brown as Commander-in-Chief of the military forces, the said Aaron C. Stephens, alias Aaron D.

The *Prisoners* were brought into Court accompanied by a body of armed men. *John Brown* and *Stevens* were unable to walk, the former having three sword stabs in the body and

Stephens, as Captain; the said Edwin Coppie, as Lieutenant, and the said Shields Green and John Copland as soldiers; and did then and there require and compell obedience to said officers; and did then and there hold and profess allegiance and fidelity to said usurped Government; and under color of the usurped authority aforesaid, did then and there resist forcibly and with warlike arms, the execution of the laws of the Commonwealth of Virginia, and with fire arms did wound and maim divers other good and loyal citizens of said Commonwealth, to the jurors unknown, when attempting, with lawful authority, to uphold and maintain said Constitution and laws of the Commonwealth of Virginia, and for the purpose, end, and aim of overthrowing and abolishing the Constitution and laws of said Commonwealth, and establishing in the place thereof, another and different government, and constitution and laws hostile thereto, did then and there feloniously and traitorously, and in military array join in open battle and deadly warfare with the civil officers and soldiers in the lawful service of the said Commonwealth of Virginia, and did then and there shoot and discharge divers guns and pistols, charged with gunpowder and leaden bullets, against and upon divers parties of the militia and volunteers embodied and acting under the command of Colonel Robert W. Baylor, and of Colonel John Thomas Gibson, and other officers of said Commonwealth, with lawful authority to quell and subdue the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie, Shields Green, and John Copland, and other rebels and traitors assembled, organized, and acting with them, as aforesaid, to the evil example of all others in like case offending, and against the peace and dignity of the Commonwealth.

Second Count.—And the jurors aforesaid, upon their oaths aforesaid, do further present that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie, Shields Green, and John Copland, severally, on the sixteenth, seventeenth, and eighteenth days of October, in the year of our Lord eighteen hundred and fifty-nine, in the said county of Jefferson and Commonwealth of Virginia, and within the jurisdiction of this Court, not having the fear of God before their eyes, but moved and seduced by the false and malignant counsels of others, and the instigations of the devil, did each severally maliciously and feloniously conspire with each other, and with a certain John E. Cook, John Kagi, Charles Tidd, and others to the jurors unknown, to induce certain slaves, to-wit: Jim, Sam, Mason, and Catesby, the slaves and property of Lewis W. Washington, and Henry, Levi, Ben, Jerry, Phil. George, and Bill, the slaves and property of John H. Allstadt, and other slaves to the jurors unknown, to rebel and make insurrection against their masters and owners, and against the Government and

a sabre cut on the head; the latter had three bullets in his head, two in his breast and one in his arm; he had the ap-

the Constitution and laws of the Commonwealth of Virginia: and then and there did maliciously and feloniously advise said slaves, and other slaves to the jurors unknown, to rebel and make insurrection against their masters and owners, and against the Government, the Constitution and laws of the Commonwealth of Virginia, to the evil example of all others in like cases offending and against the peace and dignity of the Commonwealth.

Third Count.—And the jurors aforesaid, upon their oaths aforesaid, further present that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie, Shields Green, and John Copland, severally on the sixteenth, seventeenth, and eighteenth days of October, in the year of our Lord one thousand eight hundred and fifty-nine, in the county of Jefferson and the Commonwealth of Virginia aforesaid, in and upon the bodies of Thomas Boerly, George W. Turner, Fontaine Beckham, Luke Quinn, white persons, and Hayward Sheppard, a free negro, in the peace of the Commonwealth then and there being, feloniously, willfully, and of their malice aforethought, did make an assault, and with firearms called Sharpe's rifles, and other deadly weapons to the jurors unknown, then and there, charged with gunpowder and leaden bullets, did then and there feloniously, willfully, and of their malice aforethought, shoot and discharge the same against the bodies severally and respectively of the said Thomas Boerly, George W. Turner, Fontaine Beckham, Luke Quinn, and Hayward Sheppard; and that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie, Shields Green, and John Copland, with the leaden bullets aforesaid, out of the fire arms called Sharpe's rifles, aforesaid, shot and discharged as aforesaid, and with the other deadly weapons to the jurors unknown, as aforesaid, then and there feloniously, willfully, and of their malice aforethought did strike, penetrate, and wound the said Thomas Boerly, George W. Turner, Fontaine Beckham, Luke Quinn, Hayward Sheppard, each severally; to-wit: the said Thomas Boerly in and upon the left side; the said George W. Turner in and upon the left shoulder; the said Fontaine Beckham in and upon the right breast; the said Luke Quinn in and upon the abdomen, and the said Hayward Sheppard in and upon the back and side, giving to the said Thomas Boerly, George W. Turner, Fontaine Beckham, Luke Quinn, Hayward Sheppard, then and there with the leaden bullets, so as aforesaid, shot and discharged by them, severally and respectively out of the Sharpe's rifles aforesaid, and with the other deadly weapons to the jurors unknown as aforesaid, each one mortal wound, of which said mortal wounds they the said Thomas Boerly, George W. Turner, Fontaine Beckham, Luke Quinn, and Hayward Sheppard each died: and so the jurors aforesaid, upon their oaths aforesaid, do say that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie,

pearance of a dying man and breathed with great difficulty. *John Brown* lay on a cot and *Stevens* on a mattress.

Shields Green, and John Copland, then and there, them the said Thomas Boerly, George W. Turner, Fontaine Beckham, Luke Quinn, and Hayward Sheppard, in the manner aforesaid, and by the means aforesaid, feloniously, willfully, and of their, and each of their malice aforethought, did kill and murder, against the peace and dignity of the Commonwealth.

Fourth Count.—And the Jurors aforesaid, upon their oaths aforesaid, further present that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, and Edwin Coppie and Shields Green, each severally on the seventeenth day of October, in the year of our Lord eighteen hundred and fifty-nine, in the County of Jefferson and Commonwealth of Virginia aforesaid, and within the jurisdiction of this Court, in and upon the bodies of certain Thomas Boerly, George W. Turner, and Fontaine Beckham, in the peace of the Commonwealth, then and there being feloniously, willfully, and of their malice aforethought, did make an assault, and with guns called Sharpe's rifles, then and there charged with gunpowder and leaden bullets, did then and there feloniously, willfully, and of their, and each of their malice aforethought, shoot and discharge the same against the bodies of the said Thomas Boerly, George W. Turner, and Fontaine Beckham and that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie and Shields Green, with leaden bullets aforesaid, shot out of the Sharpe's rifles aforesaid, then and there, feloniously, willfully, and of their malice aforethought, did strike, penetrate and wound the said Thomas Boerly, George W. Turner and Fontaine Beckham, each severally, viz.: the said Thomas Boerly in and upon the left side; the said George W. Turner, in and upon the left shoulder and breast, and the said Fontaine Beckham in and upon the right breast, giving to the said Thomas Boerly, George W. Turner and Fontaine Beckham, then and there, with leaden bullets aforesaid, shot by them severally out of Sharpe's rifles aforesaid, each one mortal wound, of which said mortal wounds they the said Thomas Boerly, George W. Turner and Fontaine Beckham then and there died; and that the said John Copland, then and there, feloniously, willfully and of his malice aforethought, was present, aiding, helping, abetting, comforting and assisting the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie and Shields Green in the felony and murder aforesaid in manner aforesaid to commit. And so the jurors aforesaid, upon their oaths do say that the said John Brown, Aaron C. Stephens, alias Aaron D. Stephens, Edwin Coppie, Shields Green and John Copland, then and there them, the said Thomas Boerly, George W. Turner and Fontaine Beckham, in the manner aforesaid and by the means aforesaid, feloniously, willfully, and of their and each of their malice aforethought did kill and murder against the peace and dignity of the Commonwealth of Virginia.

Andrew Hunter,²⁹ Commonwealth Attorney, and *Charles B. Harding*,³⁰ for the Commonwealth.

*Lawson Botts*³¹ and *Thomas G. Green*,³² for the prisoners.³³ *Mr. Hunter* called the attention of the Court to the neces-

In the two extended reports of the trial and in the indictments as given there, a number of verbal errors are encountered. They are either the result of the loose drawing of the indictments or are mistakes of the reporters. For example, Aaron D. Stevens is called Stephens; Edwin Coppoe is Coppie; Thomas Boerley is Boerly; Shephard Hayward is Hayward Sheppard; Copeland is Copland.

²⁹ HUNTER, ANDREW. (1804-1888.) Born Martinsburg, Va. Graduated Hampden-Sidney College, 1822. Began practice of law at Harper's Ferry; removed to Charlestown, 1825. Served in Virginia Legislature before and during Civil War. In 1850 a member of Virginia constitutional convention. A man of distinguished bearing a vigorous Southern personality, handsome face and undoubted ability. Deeply impressed with the importance of the trial, he prosecuted John Brown with marked aggressiveness, yielding no point and fighting every moment, often with some bombast, "but without," said Mr. Voorhees, "a single tone of malevolence or exasperation." Villard, p. 485. He drew Brown's will for him the night before the execution. He died at Charlestown, Nov. 22, 1888. See Norris, Hist. of Lower Shenandoah Valley.

³⁰ HARDING, CHARLES B. "A man of fine natural parts and of a classical training, Charles Harding was now a physical wreck. At the outbreak of the war, however, he shouldered a musket, and despite his years, went into the Confederate ranks, serving with devotion. Left unrelieved on outpost guard all one stormy winter night by oversight, he died the next day from pneumonia." Villard, p. 645.

³¹ BOTTS, LAWSON. Son of Gen. Thomas H. Botts of Virginia. Grandson of Benjamin Botts, counsel for Aaron Burr, and on the mother's side, of the family of General Washington. Enlisted in the Confederate Army and was soon promoted for gallantry, and was Colonel of the 2nd Virginia Regiment when he was mortally wounded on the field, Aug. 28, 1862. Was in his 36th year at the trial.

³² GREEN, THOMAS C. (1820-1889.) Familiarly called Claiborne Green. Born Culpepper Co., Va. Mayor of Charlestown, Jefferson Co., Va., at time of John Brown's raid. Served in State Legislature. Enlisted in war as a private in his friend Botts' company. Appointed by President Davis head of tax collectorship of Virginia, in which he served until surrender of Richmond. Afterwards for 14 years a District Judge of West Virginia, and a Judge of the Supreme Court of Appeals. Died at Charlestown. See Norris, Hist. Lower Shenandoah Valley.

³³ There can be no doubt that in Messrs. Green and Botts, John Brown had assigned to him far abler counsel than would have been given to the ordinary malefactor. Villard, p. 484.

sity of appointing additional counsel for the prisoners, stating that one of the counsel (Faulkner) appointed by the County Court, considering his duty in that capacity as having ended, had left. The prisoners, therefore, had no other counsel than Mr. Botts. If the Court was about to assign them other counsel, it might be proper to do so now.

The COURT stated that it would assign them any members of the bar they might select.

After consulting *John Brown*, Mr. Botts said that the prisoner retained him, and desired to have Mr. Green, his assistant, to assist him. If the Court would accede to that arrangement, it would be very agreeable to him personally.

The COURT requested *Mr. Green* to act as counsel for the prisoner.

John Brown. I do not intend to detain the Court, but barely wish to say, as I have been promised a fair trial, that I am not now in circumstances that enable me to attend a trial, owing to the state of my health. I have a severe wound in the back, or rather in one kidney, which enfeebles me very much. But I am doing well, and I only ask for a very short delay of my trial, and I think I may get able to listen to it; and I merely ask this, that, as the saying is, "The devil may have his dues," no more. I wish to say, further, that my hearing is impaired, and rendered indistinct, in consequence of wounds I have about my head. I cannot hear distinctly at all; I could not hear what the Court has said this morning. I would be glad to hear what it said on my trial, and am now doing better than I could expect to under the circumstances. A very short delay would be all I would ask. I do not presume to ask more than a very short delay, so that I may in some degree recover, and be able at least to listen to my trial, and hear what questions are asked of the citizens, and what their answers are. If that could be allowed me, I should be very much obliged.

Mr. Hunter. The request is rather premature. The arraignment should be made, and this question could then be considered.

The COURT ordered the indictment to be read, so that the

prisoners could plead, and would then consider *John Brown's* request.

The reading of the indictment occupied about twenty minutes. Both *Brown* and *Stevens* were compelled to stand during the reading, *Stevens* being held up by two bailiffs. Each of the prisoners responded *Not Guilty* and desired to be tried separately.

Mr. Hunter. The State elects to try *John Brown* first.

Mr. Botts. I am instructed by *Brown* to say that he is mentally and physically unable to proceed with his trial at this time. He has heard today that counsel of his own choice will be here, whom he will, of course, prefer. He only asks for a delay of two or three days. It seems to me but a reasonable request, and I hope the Court will grant it.}

Mr. Hunter did not think it the duty of the prosecutors for the Commonwealth, or for one occupying the position, to oppose anything that justice required, nor to object to anything that involved a simple consideration of humanity, where it could be properly allowed; yet, in regard to the proposition to delay the trial of *John Brown* two or three days, they deemed it their duty that the Court, before determining the matter, should be put in possession of facts and circumstances, judicially, that they were aware of in the line of their duties as prosecutors. His own opinion was, that it was not proper to delay the trial of this prisoner a single day, and that there was no necessity for it. He alluded in general terms to the condition of things that surrounded them. They were such as to render it dangerous to delay, to say nothing of their exceeding pressure upon the physical resources of the community, growing out of circumstances connected with affairs for which the prisoners were to be tried. He said our laws, in making provisions for allowing, in the discretion of the Court, briefer time than usual in cases of conviction, for such offenders, between the condemnation and execution, evidently indicate, indirectly, the necessity of acting promptly and decisively, though always justly, in proceedings of this kind. In reference to *Brown's* physical condition, he asked the Court not to receive the unconfirmed statements of the prisoner as a

sufficient ground for delay, but that the jailer and physician be examined. As to expecting counsel from abroad, he said that no impediment had been thrown in the way of the prisoners' procuring such counsel as they desired; but, on the contrary, every facility had been afforded; able and intelligent counsel had been assigned them here, and he apprehended that there was little reason to expect the attendance of those gentlemen from the North who had been written for. There was also a public duty resting upon them to avoid, as far as possible, within the forms of law and with reference to the great and never-to-be-lost-sight-of duty of giving a fair and impartial trial to the prisoners, the introduction of anything likely to weaken our present position, and give strength to our enemies abroad, whether it issues from the jury in time, or whether it comes from the mouths of the prisoners, or any other source. It was their position that had been imperiled and jeopardized, as they supposed, by enemies.

Mr. Harding concurred in the objection of *Mr. Hunter*, on the ground of danger in delay, and also because Brown was the leader of the insurrection, and his trial ought to be proceeded with on account of the advantage thereby accruing to the trial of the others.

[*Mr. Green* said he had no opportunity of consulting with the prisoner, or preparing a defense. The letters for Northern counsel had been sent off, but not sufficient time has been afforded to receive answers. Under the circumstances, he thought a short delay desirable.]

Mr. Botts. At present, the excitement is so great as perhaps to deter Northern counsel from coming out; but now that it had been promised that the prisoners should have a fair and impartial trial, it may be presumed that they will come and take part in the case.

The COURT. If physical inability were shown, a reasonable delay must be granted. As to the expectation of other counsel, that did not constitute a sufficient cause for delay, as there was no certainty about their coming. Under the circumstances in which the prisoners were situated, it was rational that they should seek delay. The brief period re-

maining before the close of the term of the court, rendered it necessary to proceed as expeditiously as practicable, and to be cautious about granting delays. The Court would request the physician who attended Brown to testify as to his condition.

Dr. Mason was of opinion Brown was able to go on understandingly with the trial. He did not think his wounds were such as to affect his mind or recollection. He had always conversed freely and intelligibly about the affair. He had heard him complain of debility, but not of hardness of hearing.

Mr. Cockerel. Am one of the guards of the jail. Brown had always been ready to converse freely.

[The COURT refused a postponement.]

The whole of the afternoon was taken up in selecting a jury, the following twelve men being finally selected: Richard Timberlake, Joseph Myers, Thomas Watson, Jr., Isaac Dust, John C. McClure, William Rightsdale, Jacob J. Miller, Thomas Osborne, George W. Boyer, John C. Wiltshire, foreman; George W. Tapp and William A. Martin.³⁴

³⁴ The jurors were questioned as to having formed or expressed any opinion that would prevent their deciding the case impartially on the merits of the testimony. The Court excluded those who were present at Harper's Ferry during the insurrection and saw the prisoners perpetrating the acts for which they were about to be tried. They were all from distant parts of the country, mostly farmers—some of them owning a few slaves, and others none. The examination was continued until twenty-four were decided by the Court and counsel to be competent jurors. Out of these twenty-four, the counsel for the prisoner had a right to strike off eight, and then twelve were drawn by ballot out of the remaining sixteen.

The following were the questions put to the jurors: Were you at Harper's Ferry on Monday or Tuesday? How long did you remain there? Did you witness any of the proceedings for which this party is to be tried? Did you form or express any opinion from what you saw there with regard to the guilt or innocence of these people? Would that opinion disqualify you from giving these men a fair trial? Did you hear any of the evidence in this case before the examining Court? What was your opinion based on? Was it a decided one or was it one which would yield to evidence, if the evidence was different from what you supposed? Are you sure you can try this case impartially from the evidence alone, without reference to anything

The *Jury* were sworn, and the *JUDGE* charged them not to converse upon the case or permit others to do so with them. The *Prisoner* was carried to the jail on his cot and the Court adjourned.

October 27.

John Brown was brought in walking, and lay down on his cot, at full length, within the bar. He looked better, the swelling having left his eyes.

Mr. Botts read the following dispatch, received this morning:

Akron, Ohio, Thursday, Oct. 26, 1859.

"To C. J. Faulkner, and Lawson Botts:

"John Brown, leader of the insurrection at Harper's Ferry, and several of his family have resided in this county many years. Insanity is hereditary in that family. His mother's sister died with it, and a daughter of that sister has been two years in a lunatic asylum. A son and daughter of his mother's brother have also been confined in the lunatic asylum, and another son of that brother is now insane and under close restraint. These facts can be conclusively proven by witnesses residing here, who will doubtless attend the trial if desired.

"A. H. Lewis."]

William C. Allen, telegraph operator at the Akron office, added to the above dispatch that A. H. Lewis was a resident of that place, and his statements were entitled to implicit credit.

Mr. Botts said that on receiving the above dispatch he went to the jail with his associate, Mr. Green, and read it to Brown, and was desired by the latter to say that in his father's family there had never been any insanity at all. On his mother's side there had been repeated instances of it. He added that his first wife showed symptoms of it, which were also evident in his first and second sons by that wife. Some portions of the statements in the dispatch he knew to be correct, and of other portions he was ignorant. He did not know whether his mother's sister died in the lunatic asylum, but he did believe

you have heard or seen of this transaction? Have you any conscientious scruples against convicting a party of an offense to which the law assigns the punishment of death, merely because that is the penalty assigned?

that a daughter of that sister had been two years in the asylum. He also believed that a son and daughter of his mother's brother had been confined in an asylum; but he was not apprised of the fact that another son of that brother was insane and in close confinement. Brown also desired his counsel to say that he did not put in the plea of insanity, and if he had been at all insane he was totally unconscious of it; yet he added that those who are most insane generally suppose that they have more reason and sanity than those around them. | For himself he disdained to put in that plea, and sought no immunity of the kind. This movement was made totally without his approbation or concurrence, and was unknown to him, till the receipt of the dispatch above.

John Brown (raising himself on the bed). I will add, if the Court will allow me, that I look upon it as a miserable artifice and pretext of those who ought to take a different course in regard to me, if they took any at all, and I view it with contempt more than otherwise. As I remarked to Mr. Green, insane persons, so far as my experience goes, have but little ability to judge their own sanity; and, if I am insane, of course, I should think I know more than all the rest of the world. But I do not think so. I am perfectly unconscious of insanity, and I reject, so far as I am capable, any attempt to interfere in my behalf on that score. |

Mr. Botts said he was further instructed by Mr. Brown to say that, rejecting this plea entirely, and seeking no delay for that reason, he does repeat to the court his request made before, that time be given for the foreign counsel to arrive that he has now reason to expect. The day before a dispatch was received from Cleveland, Ohio, signed "Dan Tilden," dated October 26, asking Brown whether it would be of use for counsel to leave last night. To this dispatch answer was returned that the jury would be sworn this morning, and that Brown desired the counsel to come at once. The telegraphic operator here told them that this dispatch would be sent off at once, in advance of the dispatches sent by reporters, and he had learned this morning that it was sent before the storm of last night interrupted communication, and that counsel

might reach here by 12 or 1 o'clock last night. The course taken by Brown that morning made it evident that he sought no postponement for the mere purpose of delay, as he rejected the plea of insanity. Still, in his opinion, he could have a fairer trial if the defense were conducted by his own counsel than if he were defended by the counsel at present there.

Mr. Hunter said that the prisoner's counsel having renewed the motion of the day before for delay for a specific period, indicated and based upon information received in the form of a telegram, the question now was whether there was sufficient ground in this additional information to change the decision announced by the Court the day before on the same motion. If the Court did not at once deem this circumstance wholly insufficient, before the decision was made the counsel for the Commonwealth deemed it his duty to call attention to two or three matters connected with the affair. Though desirous to avoid forestalling the trial of this case, in regard to the present prisoner at the bar, they were prepared to prove that he had made open, repeated, and constant acknowledgement of everything charged against him. He had gloried in it, and we have but an exhibition of the same spirit and the same purpose in his announcement that he would permit no defense of insanity to be put in. What does he mean by wishing delay for the purpose of having a fair trial? In a proper sense, and in the only sense in which it can be regarded by the Court, it is a fair trial according to the laws of Virginia, and the safeguards against wrongdoing the prisoner which these laws throw around him. If the prisoner's idea of a fair trial is to have it so shaped as to produce a fairness in his conception, outside of what the laws recognize, it becomes the duty of the counsel for the Commonwealth, and as he apprehended, of the Court, to resist any attempt of that kind. Considering the surrounding circumstances, to which it was unnecessary to particularly advert, there could be no right to claim delay, except so far as the prisoner could show in a reliable form that such delay was necessary to do justice in his particular case, according to the laws and policy of the State of Virginia. In regard to the telegram read, we know not who this *Mr.*

Lewis is. We know not whether he is to come here as counsel for the prisoner, or whether he wants to head a band of desperadoes. We have a right to believe the latter as well as the former. There had been time enough since the letter for Northern counsel was mailed last Saturday, for it to reach him, and for him to arrive here ere this, if he had designed coming. It was fairly inferable that he did not intend to come, and the telegram did not say he would come. But might it not be an attempt to gain time and learn the latest day when a rescue could be attempted? While commending the earnestness and zeal of the prisoner's counsel, he must ask the Court to reject the motion, and proceed with the trial at once.

Mr. Harding would be reluctant to withhold from a prisoner charged with a crime of the greatest enormity, as in the present case, anything calculated to afford him the amplest opportunity of justice; but he had able and intelligent counsel assigned him, who would see that he was fairly and impartially tried, and he therefore fully concurred with the remarks of his colleague in opposing the motion. He referred also to the fact that Brown pretended yesterday afternoon that he was unable to walk, and was brought into court on a bed, yet he walked back to jail after the close of the trial without difficulty. He thought those were mere pretenses for delay, which the Court should overrule.

Mr. Green said that one day's delay would be sufficient to ascertain whether the expected counsel would come or not, and no prejudice could result to the Commonwealth from a small delay of that character. In reference to the new matter brought to the consideration of the Court, he did not believe the prisoner had made any acknowledgment upon which he could be convicted. All the acknowledgments, so far as he knew their character, referred to the treason; and those confessions, according to our law, are insufficient to convict a party who may have acknowledged the fact in the plainest manner to one hundred witnesses—for if that is all the evidence upon which the Commonwealth relies, the prisoner cannot be convicted, because our code provides that such confes-

sion shall be made in open court, and the prisoner has denied in open court, by putting in a plea of not guilty. As to sufficient time having elapsed for counsel to reach here, it was a reasonable supposition that the persons to whom Brown wrote were absent, and did not immediately receive the letter. The Commonwealth attorney does not know who Lewis is, but he is an ex-member of Congress, and said to be a man of respectability. As to what is called Brown's sham sickness of yesterday, it should be remembered that it was not then, nor is it now, made the ground of application for delay. He did not think this trial should be hurried through, for the reason that a rescue might be apprehended, for such fears were idle.

The COURT said that he must see, in this case, as in any other, that a proper cause for delay was made out before granting such application. In the present case he could not see that the telegram gave any assurance that the additional counsel intended to come. The prisoner is now defended by counsel, who will take care that no improper evidence is adduced against him, and that all proper evidence in his behalf shall be presented. He could not see that a proper cause for delay was made out. The expected counsel might arrive before the case was closed, and could then see all the testimony which had been taken, and thus the prisoner might have the benefit of their advice, although the case now proceeds. As to the matter of insanity, it was not presented in a reliable form; instead of mere statements, we should have affidavits, or something of that character. We thought, therefore, that the jury should be sworn and the trial proceed.

Mr. Harding presented the facts of the case, detailing the scenes of the armory, the killing of the bridge keeper, and the subsequent killing of the citizens named in the indictment; the seizure of Lewis Washington and Mr. Allstadt, with their slaves; the forming of a government within the limits of the Commonwealth; the holding of citizens as prisoners of war, and the subsequent capture. He read the law on treason, levying war against the State, giving comfort to its enemies, or establishing any other government in its limits,

punishable with death; the law against advising with a slave, punishable with death; and the law on the murder of citizens, punishable with death. All these charges would be distinctly proven, beyond a possibility of a doubt on the minds of the jury. He would show that the prisoner's whole object was to rob our citizens of their slaves, and carry them off by violence; and he was happy to say against the wills of the slaves, all of them having escaped, and rushed back to their masters at the first opportunity. He concluded by urging the jury to cast aside all prejudices, and give the prisoners a fair and impartial trial; and not to allow their hatred of Abolitionists to influence them against those who have raised the black flag on the soil of this Commonwealth.

Mr. Green, after giving the law applicable to the case, said that the jury must bear in mind that they are judges of the law and the facts, and that if they have any doubt as to the law, or the fact of the guilt of this prisoner, they are to give the prisoner the benefit of that doubt.

On the first charge of treason, as a specific act of treason must be proven, it must be proven that he attempted to establish a separate and distinct government; and it must also be proven what was purposed of treasonable acts before you can convict him on those charges. If it is intended to rely on his confessions to prove treason, the law distinctly says, "No conviction can be made on confessions, unless made in open court." There must be sufficient evidence to prove the charge, independent of any confessions out of the court, and it requires two distinct witnesses to prove each and every act of treason.

Second: Conspiring with slaves to rebel and make insurrection. The jury must be satisfied that such conspiracy was done within the State of Virginia, and within the jurisdiction of this Court. If it was done in Maryland, this Court could not punish the act. If it was done within the limits of the armory at Harper's Ferry, it was not done within the limits of this State, the Government of the United States holding exclusive jurisdiction within the said grounds. Attorney-General Cushing had decided this point with regard to the

armory grounds at Harper's Ferry, which opinion I will read to the jury, showing that persons residing within the limits of the armory cannot even be taxed by Virginia, and that crimes committed within the said limits are punishable by the Federal Courts. Although the jury may doubt about the law on the subject, they must give the prisoners the benefit of that doubt upon the trial. Over murder, if committed within the limits of the armory, this court has no jurisdiction, and in the case of Mr. Beckham, if he was killed on the railroad bridge, it was committed within the State of Maryland, which State claims jurisdiction up to the armory grounds. [Although he may be guilty of murder, it must be proven that it was deliberate and premeditated murder to make it a capital offense; if otherwise, the killing was murder in the second degree, punishable with imprisonment. If you have any doubt on these points you must give that doubt to the prisoners. He was satisfied the jury will not allow any outside excitement to affect them, and that they will do their duty faithfully and impartially.

Mr. Botts said the case was an unusual one, and the crime charged in many respects unknown. The jury trial called for a calm, unimpassioned deliberation, and not the seizure upon loose statements for a conviction. The jury must be above all prejudices and influences, and deliberate calmly, and free of all resentment, bearing in mind that the mission of the law is not to wreak vengeance, and that the majesty of the law is best maintained when judges, counsel and jury rise above these influences. [The burden of proof is on the Commonwealth, and if she fails to substantiate her charges, you are bound to do your duty impartially, and find your verdict on the law and testimony that the Commonwealth may be able to present to you. He then proceeded to go over the same grounds taken by *Mr. Green* on each of the three points in the indictment—treason, insurrection and murder. It is no difference how much a jury may be convinced in their own minds of the guilt of the prisoner, it is essential that they must have proof of positive guilt, in a case like this, involving both life and liberty. [It was due to the prisoner to state

that he believed himself to be actuated by the highest and noblest feelings that ever coursed through a human breast, and that his instructions were to destroy neither property nor life. They would prove by those gentlemen who were prisoners that they were treated with respect, and that they were kept in positions of safety, and that no violence was offered to them. These facts must be taken into consideration, and have their due weight with the jury.]

Mr. Hunter stated his purpose to avoid anything by way of argument or explanation not immediately connected with the particular issue to be tried, and to march straight forward to the attainment, so far as may be in our power, of the ends of justice, by either convicting or acquitting the prisoner at the bar. With a single preliminary remark explanatory of his position here as assistant, a position which had been assigned to him by the governor of the Commonwealth, as well as his honor the judge, he passed at once to a review of what was the law in reference to the case, and what he expected to be able to prove to the satisfaction of the jury. First, as to high treason, this was probably the first case of high treason, or treason against the State, that ever had been tried here by our State courts, and he fervently hoped it would be the last that would ever occur; and probably in some degree not only upon our decision, but upon our prompt decision of this case, will that result depend.

He thought his friends on the other side were totally mistaken in their view that the law as it now stands on our statute books in reference to overt acts was, either in language, or substantially, that contained in the Constitution of the United States. On the contrary, the phraseology had been varied from that of the Constitution, and, as he conceived, for a plain and palpable purpose. All the powers vested in the Federal Government were given with great jealousy. This was a historical fact, perfectly familiar, and consequently, while treason against the United States consisted only in levying war against them, or adhering to their enemies and giving them aid and comfort, there is no provision that no person shall be convicted of treason unless upon the testimony of

two witnesses of some overt act or confession in open court. Yet the State law is more full, and includes within its definition of treason the establishing, without the authority of the Legislature, any government within its limits, separate from the existing government, or the holding or executing, under such Government, of any office, professing allegiance or fidelity to it, or resisting the execution of law, under the color of its authority; and it goes on to declare that such treason, if proved by the testimony of two witnesses to the same overt act, or by confession in Court, shall be punished with death. Any one of these acts constitutes treason against this Commonwealth, and he believed that the prisoner had been guilty of each and all these acts, which would be proven in the clearest manner, not by two, but by a dozen witnesses, unless limited by the lack of time. The prisoner had attempted to break down the existing Government of the Commonwealth, and establish on its ruins a new government; he had usurped the office of Commander-in-Chief of this new government, and, together with his whole band, professed allegiance and fidelity to it; he represented not only the civil authorities of the State, but our own military; he is doubly, trebly and quadruply guilty of treason.

Mr. Hunter proceeded again to the question of jurisdiction over the armory grounds, and examined the authority cited on the other side, of Attorney-General Cushing; the latter was an able man, but he came from a region of country where opinions are very different from ours in relation to the power of the Federal Government as affecting State rights. Our Courts are decidedly adverse to Mr. Cushing's views. In all times past, the jurisdiction of this county of Jefferson in criminal offenses committed at Harper's Ferry, has been uninterrupted and unchallenged, whether they were committed on the Government property or not. He cited an instance, twenty-nine years ago, where an atrocious murder was committed between the very shops in front of which these men fought their battles, and the criminal was tried here, convicted, and executed under our laws. There was a broad difference between the cession of jurisdiction by Virginia to

the Federal Government and mere assent of the State that the Federal Government should become a landholder within its limits. The laws of Virginia, by virtue of which the grounds at Harper's Ferry were purchased by the Federal Government, ceded no jurisdiction. Brown was also guilty, on his own notorious confession, in advising conspiracy. In regard to the charge of murder, the proof will be that this man was not only actually engaged in murdering our citizens, but that he was the chief director of the whole movement. No matter whether he was present on the spot or a mile off, he is equally guilty. In conclusion, Mr. Hunter said that he hoped the case would be considered with fairness and impartiality, and without fear, favor or affection; and he only asked that the penalty might be visited on the prisoner which law denounces, which reason denounces, which our safety requires, and which the laws of God and man approve.

THE WITNESSES FOR THE COMMONWEALTH.

*Dr. John D. Starry.*³⁵ On Sunday night, heard a shot fired at the Ferry; heard a cry, looked out and saw two men passing from toward the Armory gate, and a tall man came from the Armory gate, and two men from the cars hallooed, "There he goes now!" The man stopped, raising his rifle; they followed him to the Armory gate, and exchanged shots with him; Conductor Phelps was one of those men; afterwards found a black man, Hayward, dying in the railroad office; he said he was commanded to stop by the men on the bridge, and refusing, they fired upon him; saw several men patrolling during the night and go into the bridge; did not know

what to make of it, and went to inquire of the Armory watchman; met a man who levelled his rifle at me; asked him where the watchman was, and was answered that he was not there, but that there were "a few of us here;" saw Col. Washington's four-horse wagon arrive and afterwards saw it driven by a white man over the Maryland bridge with three armed men following it; at daylight saddled my horse and went to Mr. Kitzmiller and Mr. Ball and told them that an armed body of men had possession of the Armory, and not to go near it; also gave information to the other persons employed in the Armory. Then I went to Bolivar Heights and aroused the

³⁵ "Harper's Ferry had its Paul Revere. It was John D. Starry, a physician of the town, who lived but a stone's throw from the Wager house." Villard, p. 434.

sleeping people, and without dismounting rode back into town to Hall's Rifle Works where I found three armed men; they did not molest me and I went back to the Hill to learn of the shooting of Boerley. Ordered the Lutheran church bell rung and got a lot of the citizens together to see what arms we had. Found only one or two squirrel rifles and a few shot guns. Sent a messenger to Charlestown for Captain Rowan, of a Volunteer Company there and to the Baltimore & Ohio Railroad to stop trains coming east and not let them approach the Ferry. When I learned from the foreman of the Arsenal that all the guns there were in possession of the raiders. Returning to the Ferry I learned that the citizens had got some guns out of the workshop. Decided to go to Charlestown, eight miles distant myself. Rode fast and got there about 7 a. m.; the alarm bells were being rung and men were hurrying from all directions to the Courthouse; the militia, the Jefferson Guards, soon assembled and arrived by train about eleven. I got back about the same time and assisted in bearing orders and guiding the armed men to the best places of attack. Did not see John Brown there at any time.

About 3 o'clock I organized a party to go over to the Rifle works (Hall's), as there were only a few of the raiders there I had ascertained. I put a young man named Irwin in command. They went over at once and opened fire, and at the first fire the

leader there, Kagi, and several others who were with him in the works went out the back way, climbed over the railroad track and jumped into the Shenandoah river. But as they swam across they were met by another of our party who prevented their landing. They made for a flat rod near the middle of the stream but before they reached it, a bullet reached Kagi and he turned and died in the water without a struggle. A negro^{35a} was going to the rock in the shallow water when James Holt, one of our men, waded out and tried to shoot him, but his gun had got wet and it wouldn't fire, and was using it as a club on the negro when he surrendered. When they brought him to the bank there were loud cries of "Lynch him." Some of the men were tying their handkerchiefs together to make a rope. I got near him and shielded him with my horse until a policeman arrived and took him to a safe place. Another black was also taken away badly wounded.³⁶

Of the Brown party I have seen ten dead altogether, including those in the engine house. Of the citizens there were four killed. Messrs. Boerley, Turner and Beckham and the negro Hayward.

Cross-examined. As I rode past the Armory, armed men were at the gate; they did not attempt to stop me; was determined not to be stopped.

Conductor Phelps. Was conductor on the Baltimore & Ohio train which was bound from the West to Baltimore; arrived

^{35a} Copeland.

³⁶ Leary.

about 1:25 in the morning. On Saturday night, the 15th, my train arrived at 1:25, bound east; no watchman at the bridge; thought it strange, as his business was to be there; was talking to the engineer, and in the act of starting ahead, when Watchman Higgins³⁷ came up to me, much excited, to state that he had been attacked on the bridge by men carrying rifles; Mr. Horsey was there with my light before starting the train; the baggage master, Shephard Hayward and a passenger accompanied him, and when they entered the bridge some one said, "stand and deliver;" had previously told the engineer to follow me slowly, but immediately saw the muzzles of four rifles resting on a railing, and pointed at us; told the engineer to back—something was wrong on the bridge—which he did; as I got on the tresseling, heard the report of a gun, and Hayward, the colored man, came running to me, and said, "Captain, I am shot;" the ball had entered the back, and came out under the left nipple; carried him to the railroad office, and started for the doctor, and saw one man come out of the bridge, and go towards the Armory gate; remarked, "There he goes now," and Throgmorton, clerk at the Wager House, fired at him; the shot was returned by two men

at the Armory gate; was close behind Throgmorton, who exchanged several shots with them; this was ten minutes after Hayward was shot; heard the men loading their rifles again; the reports were very loud, and I wondered why the people were not aroused; walked back to the railroad office, and one of the party on the bridge came out; he said, "You can come over the bridge with your train;" I replied I would rather not, after these proceedings," and asked, "What do you want?" he replied, "We want liberty and we intend to have it!" I then asked, "What do you mean?" he replied, "You will find out in a day or two;" then felt alarmed for the safety of myself and passengers, and concluded to wait till daylight; men were passing back and forward from the bridge to the gate of the Armory; each appeared to be in blankets; the passengers were much excited and wanted to know what it meant; went to the back of the train, and saw from twenty to thirty men about the engine house; at about 4 o'clock saw a wagon driven in the yard, and nearly a dozen men jumped out of it, also a carriage, but did not see any one get out of it; saw men go backward and forward, who seemed to be putting something in the wagon; they were also going up and

³⁷ Patrick Higgins, another night watchman of the bridge, came to relieve Watchman Williams, just after Williams had been captured by the raiders. He saw a group of men; one called on him to halt, but to use his own words: "I didn't know what halt meant then any more than a hog knows about a holiday," and he struck at Oliver Brown when one of the others fired. A bullet ploughed a furrow in his scalp, but this did not prevent his seeking safety in the Wager house and helping to give the alarm. Villard, p. 432.

down the street leading from the Armory, and all seemed busy at something; this continued until nearly daylight, when the wagon left the yard and passed over the bridge to the Maryland side.

About 3 o'clock, before the wagon left, an old gentleman came to me and said, "The parties who have arrested me allowed me to come out on condition that I would tell you that you might cross the bridge with your train;" I afterward learned that this was Mr. Cross, a citizen of the town; replied that "I would not cross the bridge until daylight, that I might see whether it was safe;" afterwards saw a man coming down Shenandoah street with a lantern, an armed man arrested him; afterwards saw a short stout negro walking with a staff with one of these men; could not see what was in the wagon; afterwards a black boy brought a note to the clerk of the Wager House ordering breakfast for forty-seven men; determined to go out and ascertain what it meant; met a man whom I now recognize as Copoc, and asked him what they meant; he replied, "We don't want to injure you or detain your train; you could have gone at 3 o'clock; all we want is to free the negroes;" then asked if the train could now start, and went to the guard of the gate, who said, "There is Captain Smith—he can tell you what you want to know;" went to the engine house, and the guard called Capt. Smith, that somebody wanted to see him; the prisoner at the bar came out, and I asked him if he was captain of these—; he replied he was; asked him if I could cross the bridge, and he peremptorily re-

sponded, "No, sir;" then asked him what he meant by stopping my train; he replied, "Are you the conductor on that train?" told him I was, and he said, "Why I sent you word at 3 o'clock that you could pass;" told him that after being stopped by armed men on the bridge, I would not pass with my train; he replied, "My head for it, you will not be hurt;" said he was very sorry; it was not his intention that any blood should be spilled; that it was bad management on the part of the men in charge of the bridge; I then asked him what security I would have that my train would pass safely, and asked him if he would walk over the bridge ahead of my train with me; he called a large stout man to accompany him, and one of my passengers, Mr. McByrne, asked to accompany me; but Brown ordered him to get into the train, or he would take them all prisoners in five minutes; Brown accompanied me; both had rifles; as we crossed the bridge, the three armed men were still in their places; when we got across, Brown said to me, "You doubtless wonder that a man of my age should be here with a band of armed men, but if you knew my past history you would not wonder at it so much;" my train was then through the bridge and I bid him good morning, jumped on my train, and left him. When we got to Monocacy at 7:05, I telegraphed to Mr. Smith, the master of transportation, what had happened, that the baggage master and I had been fired on, and that Hayward had been shot and that the insurrectionaries were 150 strong, that they had come to free the

slaves and intended to do so at all hazards and that the leader told me to notify him that this is the last train that shall pass the bridge. I suggested that he notify the Secretary of War at once; told him that this was the first station I could send a dispatch from as the telegraph wires were cut east and west of Harper's Ferry. At 9 I got a reply saying that I must be mistaken. Why, it said, should our trains be stopped by Abolitionists. What is their object. Let me know before I proceed to extremes. I replied from Ellicott Mills at 11 o'clock: My dispatch was not exaggerated, neither was it written under excitement, as you suppose I have not made it half as bad as it is. I will call at your office immediately on my arrival and tell you all.³⁸

I returned to Harper's Ferry on Tuesday, and went in with Governor Wise and others to see Brown, who was a prisoner; heard his conversation with Wise and Hunter; Mr. Wise said he was sorry to see a man of his age in that position; Brown replied that he asked no sympathy, and had no apologies to make; he knew exactly what he was about;

the Governor asked him if he did not think he was doing wrong in running off with other people's property; Brown said, No, he didn't; he stated that he never had but twenty-two men of his party, but expected large reinforcements from Maryland, Virginia, North and South Carolina, and, I think, some of the New England states and New York. He said that the arms were sent to them from Massachusetts; think he spoke of Sharpe's rifles, revolvers, and spears; said he could arm from 1,500 to 2,000 men; said he had Harper's Ferry in his eye as the place for his operations; that he had rented a farm four miles off, from Dr. Kennedy, and had paid the rent up to March, and that all his arms were sent to him there from Chambersburg, Pa.; said those who brought the arms there did not know what they were, as he had taken the precaution to place them in double boxes; they were addressed to J. Smith & Sons.

Brown told Governor Wise that he had books in his trunk that would explain to him his whole proceedings, and what the purpose of his business was; Col. Lee said he had one which purported to be John Brown's new

³⁸ "Before this reply was received, the president of the railroad, John W. Garrett, had seen the conductor's dispatch and lost no time in acting upon it. At half past ten he had telegraphed to the President of the United States, to Gov. Wise of Virginia, and to Major General George H. Stuart, commanding the first light division Maryland volunteers in Baltimore, that an insurrection was in progress in Harper's Ferry in which free negroes and whites were engaged. Moreover from Monocacy word has reached Frederick, a short distance away, and by ten o'clock the military company of that place was under arms. Thus by John Brown letting the conductor pass to spread abroad the tidings of what had happened, the first alarm was given hours before it should have been." Villard, 434, 435.

Constitution. and handed it to Governor Wise; Brown asked him to read two of its first preambles and four of the last sections, which he did,³⁹ and Brown said that was a correct copy; in reply to a question of Governor Wise, he said he was Commander-in-Chief of the forces under the Provisional Government, and

that he then held that position; he said the constitution was adopted in a place called Chat-ham, in Canada; Brown said there was a Secretary of War, Secretary of State, Judge of the Supreme Court, and all the officers for a General Government; he said there was a House of Representatives, and that there

³⁹ These were as follows:

Preamble.—Whereas, Slavery throughout its entire existence in the United States, is none other than the most barbarous, unprovoked, and unjustifiable war of one portion of its citizens against another portion, the only conditions of which are perpetual imprisonment, and hopeless servitude, or absolute extermination in utter disregard and violation of those eternal and self-evident truths set forth in our Declaration of Independence:

Therefore, We, the citizens of the United States, and the oppressed people, who, by a recent decision of the Supreme Court, are declared to have no rights which the white man is bound to respect, together with all the other people degraded by the laws thereof, do, for the time being, ordain and establish for ourselves the following Provisional Constitution and ordinances, the better to protect our people, property, lives, and liberties, and to govern our actions:

Article 45.—Persons to be Seized: Persons living within the limits of territory holden by this organization, and not connected with this organization, having arms at all, concealed or otherwise, shall be seized at once, or be taken in charge of by some vigilant officer, and their case thoroughly investigated; and it shall be the duty of all citizens and soldiers, as well as officers, to arrest such parties as are named in this and the preceding section or article, without formality of complaint or warrant; and they shall be placed in charge of some proper officer for examination, or for safe keeping.

Article 46.—These Articles not for the Overthrow of Government: The foregoing articles shall not be construed so as in any way to encourage the overthrow of any State Government or of the General Government of the United States, and look to no dissolution of the Union, but simply to amendment and repeal, and our flag shall be the same that our fathers fought under in the Revolution.

Article 47.—No Plurality of Offices: No two offices specially provided for by this instrument shall be filled by the same person, at the same time.

Article 48.—Oath: Every officer, civil or military, connected with this organization, shall, before entering upon the duties of office, make a solemn oath or affirmation to abide by and support the Provisional Constitution and these ordinances. Also every citizen and soldier before being recognized as such, shall do the same.

was an intelligent colored man elected as one of the members of the House;; Governor Wise asked Brown if he had taken the oath of allegiance provided for in the 48th article; he replied he had; asked if all the white men of his band had taken the oath; he replied that they had; he said that there were appointed and commissioned officers; that Stevens, Leaman, and one of Brown's sons were captains, and Coppoc was a lieutenant; he said something about a battle in Kan-

sas, and having had one of his sons shot; I think he said Cook held a captain's commission; Gov. Wise asked Brown if he thought he had been betrayed to the Secretary of War; he said he thought he had been betrayed, but had practiced the ruse to prevent suspicion; the Governor asked him what that ruse was, but he refused to answer; said he knew exactly the position he had placed himself in, and if his life was forfeited he was prepared to suffer.

Mr. Green said he had just received a dispatch from Cleveland, announcing that counsel was coming, and would almost certainly be here at night. As this was a very important witness, and as it was late in the evening, he would ask the Court to adjourn until morning, in order that counsel might have an opportunity to cross-question the witness. He did not intend to conduct the case longer than the arrival of counsel selected by the prisoner. As only scraps of a conversation of two hours with Gov. Wise had been picked out and given to the jury, he desired that the witness should be questioned as to the other parts of the conversation.

Mr. Hunter replied that there were several other witnesses to be called, of the same character, to whom such questions could be put by new counsel the next day. If the cases were not pushed on, the whole balance of the term would not be sufficient to try these men. He thought there was no reason for delay, especially as it was uncertain whether the counsel could get here before the next day.

The COURT decided that the witness should proceed.

Cross-examined. In conversation, Brown said it was not his intention to harm anybody or anything; was sorry men had been killed; it was not by his orders or with his approbation, and would not occur again, provided the people were peaceable and

quiet; when Brown spoke of taking them all prisoners if they did not get into the cars, he appeared to want the train to go on as soon as possible; it was advice more than in the form of a threat; did not recognize Brown till I talked with him in the ar-

mory yard; don't think Brown was with the party on the bridge or in the wagon, for if he had been I think I would have recognized him from his peculiar beard. When Brown was parleying with us at the bridge the three armed men remained there.

Col. Lewis W. Washington. I am forty-six years old, engaged in farming about five miles from Harper's Ferry. I am a slaveowner and landowner. Between one and two o'clock Sunday night, while in my bed at my house, five or six miles from Harper's Ferry; I was awakened by hearing my name called in the hall; supposed it was some friends arrived who, being acquainted with the house, had come in through the kitchen without making any noise; got up and opened the door into the hall, and before me stood six men, three armed with Sharp's rifles, leveled and cocked; I recognized Cook, Coppoe and another white man whom I afterward recognized as Kagi. There were also two negro prisoners; the fourth, Stevens, was in command, with a revolver in his right hand, and in his left a lighted flambeau, made of pine whittlings. As I opened the door, one of the men said, Is your name Washington? Said I, that is my name. Perhaps Cook, who was of the crowd, identified me, as he told me afterward he was taken there for that purpose; was then told I was a prisoner, and one of them said, Don't be frightened. I replied, Do you see anything that looks like fright about me? No, he said, I only want to say that if you surrender and come with us freely you are safe. I was struck with the number of men

sent against me and asked what need there was of so many as there was no danger of an unarmed man in his night shirt resisting an armed force; was told to put on my clothes, and complied. Perhaps, said I, while I am dressing, you will be so good as to tell me what all this means? Inquired what the weather was outside, and one of them advised me to put on an overcoat as it was rather chilly. Another said they wanted my arms, and I opened the gun closet for them to help themselves. They then explained their mission, which they represented to be purely philanthropic, to-wit: the emancipation of all the slaves in the country. After I was dressed Stevens said to me, Have you got any money? I replied, I wish I had a great deal. Be careful, sir, said he. I told him if I had money I knew how to take care of it, and he could not get it. Said he, Have you a watch? My reply was, I have, but you cannot have it. You have set yourselves up as great moralists and liberators of slaves; now it appears that you are robbers as well. Be careful, sir, said he again. I told them I was dressed and ready to go. They bade me wait a short time and my carriage would be at the door. They had ordered my carriage for me, and pryed open the stable door to get it out. They had harnessed the horses on the wrong side of each other, and I tried to induce them to correct the mistake, which they did after driving a short distance, but being harnessed wrong and rather spirited animals, they would not work well.

My servant, whom they had

forced along, was driving. I suspected they were only robbers and that they would turn off at some point, but they drove directly to the armory. Brown came out and invited me in, saying there was a comfortable fire, and I shortly afterward met with Mr. Allstadt, whom they had arrested on the way and brought along in my buggy wagon. While coming along, the horses being restive, I got out and walked up a hill with one of the men who took occasion to ask my views on the subject of slavery in the abstract. I declined an argument on the subject, but he still pressed it upon me and I was obliged to refuse the second time.

Brown told us to make ourselves comfortable, and added, By and by I shall require each of you gentlemen to write to some of your friends to send a stout negro man in your place. This was by way of ransom. He told us he must see the letter before it was sent, and he thought after this was effected they could make an arrangement by which we could return home; determined in my own mind not to make the requisition but he never made application for it, having other matters before the day expired, attracting his attention. Brown ordered breakfast for forty-five at the Wager house; neither I nor Mr. Allstadt or Brown himself ate—all of us I think being afraid that the employes had poisoned the food.

My sword, which had been presented by Frederick the Great to General Washington, was taken

from my house with other arms. Stevens made me hand it to one of the negroes.⁴⁰ Cook had been at my house some time before and seen the arms, and at that time I beat him at shooting, and he told me I was the best shot he had ever met. On the way to Harper's Ferry he asked me if I had shot any since, and made an apology for being with this party after being so well treated by me; told him it was of no consequence about the apology, but I would ask one favor of him, which was to use his influence to have returned to me the old sword and an old pistol, which, in the present improved state of arms, were only valuable in consideration of their history. He promised to attend to it, and shortly after reaching the armory I found the sword in Old Brown's hands. Said Brown, I will take especial care of it and I shall endeavor to return it to you after you are released. He carried the sword in his hands all day on Monday, until the marines attacked, when he laid it on a fire engine and after the rescue I got it.

Upon the announcement of the arrival of the militia, Brown came into the room and picked out ten of us, whom he supposed to be the most prominent men. He told us we might be assured of good treatment, because in case he got the worst of it in the fight, the possession of us would be of service in procuring good terms; we could exercise great influence with our fellow-citizens; and as for me, he knew if I was

⁴⁰ O. Anderson. "Another bit of that symbolism by which Brown set such store." Villard 431.

out I should do my duty, and, in my position as aid to the Governor I should be a most dangerous foe. Then we were taken into the engine house and closely confined. Two of our number went backward and forward repeatedly to confer with citizens during the negotiations, and finally remained out altogether, leaving the eight who were inside when the building was assaulted and captured by the marines. During Monday various terms of capitulation were proposed and refused and at night we requested our friends to cease firing during the night, as, if the place should be stormed in the dark, friends and foes would have to share alike. In the morning Capt. Sinn, of Frederick, announced the arrival of the United States marines. During the night he had brought in Dr. Taylor, of Frederick, to look at the wounds of old Brown's son. The surgeon looked at the man and promised to attend him again in the morning if practicable, but about the time he was expected hostilities had commenced.

Col. Lee, who commanded the United States forces, sent up Lieut. Stuart to announce to Brown that the only terms he would offer for surrender were, that he and his men should be taken to a place of safety and kept unmolested until the will of the President could be ascertained. Brown's reply was to the effect that he could expect no leniency, and he would sell his life as dearly as possible. A few minutes later the place was assaulted and taken. In justice to Brown, I will say that he advised the prisoners to keep well under shelter during the firing, and at

no time did he threaten to massacre us or place us in front in case of assault. It was evident he did not expect the attack so soon. There was no cry of surrender by his party except from one young man, and then Brown said, only one surrenders. This fellow, after he saw the marines, said he would prefer to take his chance of a trial at Washington. He had taken his position and fired one or two shots when he cried surrender. There were four of Brown's party able to fight when the marines attacked, besides a negro, making five in all. This negro was very bold at first but when the assault was made, he took off his accoutrements, and tried to mingle with the prisoners, and pass himself off as one of them. I handed him over to the marines at once, saying he was a prisoner at all events.

Cross-examined. Cannot say whether the marines fired after they broke into the engine house; the noise was great and several shouted from the inside that some one had surrendered the prisoners; we were kept in the rear engine house and allowed to keep a safe position so that there was no effort to endanger us; Brown's conduct was not rude or insulting toward us.

To Mr. Hunter. Was present at the conversation with Gov. Wise on Tuesday; Gov. Wise asked Brown if he had not selected Harper's Ferry as a border place between Maryland and Virginia for the establishment of his Provisional Government, and he answered, Certainly. He avowed that his object was to free the Southern slaves and said that his party consisted of twenty-two men, nineteen of whom came

over with him; he said he had 200 Sharpe's rifles, 200 revolvers, and I do not remember how many spears; Brown said he had enough to arm about 1,500 men; the Governor asked if he expected that number; he said no doubt that number, and five thousand if he wanted them.

To Mr. Botts. At the time of the attack on the engine house the prisoners remained in the rear, at the suggestion of Brown and his party; heard Brown direct his party not to fire on any unarmed man; he gave that order more than once.

To Mr. Hunter. Cook said Brown had been studying this subject for twenty or thirty years; had reconnoitered Harper's Ferry repeatedly.

To Mr. Botts. The prisoners were allowed to go out, and assure their families of their safety; some went out several times; told my men not to return from my dwelling house; there were numerous shots toward the tank where Beckham was killed; Brown assured me that I should be treated well and my property should not be destroyed.

To Mr. Hunter. While a prisoner in the engine house, overheard a conversation between Stevens and another party not known to me about slaveholding. Stevens asked the man if he was in favor of slavery. He said yes, although not a slaveholder. Stevens said, You are the first man I would hang.

To Mr. Harding. One of the three negroes taken with me was kept in the armory yard; another escaped and went home; saw no conversation in particular between the party and

the negroes who were taken there; all the negroes were armed with spears while in the armory yard; they walked about the armory grounds, and one came and warmed himself; no negro from this neighborhood appeared to take up arms voluntarily; saw no wounded men dragged into the engine house.

Daniel Whalen. Live at Harper's Ferry; am 39 years old; was in the United States service as watchman at the armory on Sunday night of the raid. The first time I saw the raiders, heard the noise of their wagon coming down the street from the depot, and then I advanced about three yards out from the watch house door and observed the wagon standing-facing the armory gate, which was locked; thought it was Mr. Mason, the head watchman; there were two men at the padlock striving to open it; I told them to hold on; I went to the gate and when I observed it was not Mr. Mason, I drew aside at the gate and looked until I observed them, and saw they were strangers; when they all came into the yard, think there were about twenty-five men; they asked me to open the gate; I told them I could not open the gate by any means; open the gate, said they; I said I could not if I was struck, and one of them jumped upon the pier of the gate over my head and another fellow ran and put his hand on me and caught me by the coat and held me; was inside and they were outside, and the fellow standing over my head upon the pier, when I would not open the gate for them, five or six ran in from the wagon, clapped their guns against my breast, and told

me I should deliver up the key; told them I could not; and another fellow made answer and said they had not time now to be awaiting for a key, but to go to the wagon and bring out the crowbar and large hammer, and they would soon get in; they went to the wagon and brought a large crowbar out of it; they twisted the crowbar in the chain and they opened it, and in they ran and got in the wagon; one fellow took me; they all gathered about me and in my face; I was nearly scared to death with so many guns about me; did not know the minute or the hour I should drop; they told me to be very quiet and still and make no noise or else they would put me to eternity; one of them ordered the wagon to be marched in, and

all got in the wagon except four who had me; they took the wagon down the yard and fastened the horses' heads to the gate where Colonel Barbour's office is; after that, the head man of them, Brown, ordered all of the men to dispatch out of the yard, but he left a man at each side of the big gate along with himself; he himself still had me and Bill Williams the watchman whom he brought down off the Potomac bridge; those other two men were at the gate, and then he said, I came here from Kansas, and this is a slave state; I want to free all the negroes in this state; I have possession now of the United States armory, and if the citizens interfere with me, I must only burn the town and have blood.

October 28.

The Court met at eleven o'clock. *Brown* was led from the jail, walking very feebly. He lay down upon his cot.

Mr. Botts announced the arrival of *Mr. George H. Hoyt*⁴¹ of Boston, who had come here to assist the counsel for the

⁴¹ HOYT, GEORGE HENRY. (1837-1877.) Born Athol, Mass. Law student in Boston at time of John Brown raid. Admitted to Worcester bar, 1858 or 1859. Enlisted in John Brown Jr.'s company of sharpshooters in Kansas in 1861; was successively second lieutenant and captain of 1st Kansas cavalry, and lieutenant-colonel of the 15th Kansas cavalry; commissioned brigadier-general by brevet, March, 1865, for gallant service. Attorney General of Kansas, 1868. In 1871 removed to Athol, where he practiced law and purchased an interest in the *Athol Transcript*, of which he was editor until summer of 1873. Twice elected representative to the legislature, 1872-1873. See Bench and Bar of Mass.; Caswell, Athol Past and Present; Hoyt, D. W., General Hist. of John Hoyt.

On the day the news of the raid was received, John W. Le Barnes, of Boston, engaged at his own expense, a young lawyer of Athol, Mass., George H. Hoyt, and asked him to go to Harper's Ferry ostensibly as counsel to John Brown, but really as a spy, to see if it would be possible to rescue the prisoner. Mr. Hoyt's instructions were, "first, to watch and be able to report proceedings, to see and

prisoner. At present, however, he did not feel disposed to take part in the case. Whenever he should feel disposed he would do so.

Mr. Hunter suggested that he had better be qualified as a member of the bar by producing proof from the Boston bar.

Mr. Hoyt said he had not brought his credentials of admission.

The COURT said that that was not required in order to be strictly legal; to that fact any citizen's evidence would answer.

talk with Brown, and be able to communicate with his friends anything Brown might want to say; and second, to send me (Le Barnes) an accurate and detailed account of the military situation at Charlestown, the number and distribution of troops, and location and defenses of the jail, and nature of the approaches to the town and jail, the opportunities for a sudden attack, and the means of retreat, with the location and situation of the room in which Brown is confined, and all other particulars that might enable friends to consult as to some plan of attempt at rescue."

Le Barnes chose Hoyt because, although twenty-one years of age, he looked not over nineteen, and was physically of fragile appearance. His very youth and evident lack of worldly experience would, Le Barnes thought, make it impossible for any one to suspect him of ulterior motives, if he appeared at Charlestown. Dr. Samuel G. Howe, when consulted by both men, doubted the wisdom of the scheme; but Le Barnes persisting and giving him seventy-five dollars, Hoyt set forth, little dreaming that upon his frail shoulders would shortly rest the burden of the whole defense of John Brown. His experience told against him in Charlestown. He had not been there an hour before his very youth had aroused the suspicions of Andrew Hunter, the special prosecutor of the State of Virginia. Knowing full well that Massachusetts had no need to rely on callow striplings when skilled legal talent was in order, he shrewdly inferred that something else was in the wind, and, but for Judge Parker's magnanimity, would have excluded Hoyt from participation in Brown's trial as incompetent to practice in the courts of Virginia. "A beardless boy came in last night as Brown's counsel," reported Hunter to Governor Wise on October 28. "I think he is a spy. There are divers other strangers here. . . . They are watched closely." But the watch set upon the "beardless boy" was not close enough to prevent his communicating freely with the client to whom he had so unexpectedly attached himself, and he wasted no time in acquainting Brown with the real purpose of his unannounced arrival. Villard, p. 485.

Mr. Green said his partner had read letters from fellow students of *Mr. Hoyt*, alluding to him as a member of the bar.

Conductor Phelps (recalled). The firing was commenced by those men on the bridge who shot *Hayward*; do not know whether the firing at *Hayward* was intentional; there was no attack on *Brown's* men until after *Hayward* was shot; he was shot by armed men in the Winchester span of the bridge.

Col. Lewis W. Washington (recalled). Negotiations were opening with *Brown* for the release of the prisoners before the general firing commenced on Monday; do not know whether all the prisoners signed the proposition for a suspension of firing; in the opening negotiations, *Brown* frequently suggested that the prisoners should cross the bridge with him to the second canal, and the lock was not to be fired until they reached that point; none of the prisoners made any objection to the proposition; *Brown* said he was too old a soldier to yield the advantage he possessed in holding hostages; during the day *Brown's* son was wounded in the breast, the ball passing around to the side, but he took his weapon again, and fired frequently before his sufferings compelled him to retire; heard *Capt. Brown* frequently complain of bad faith of people on a flag of truce; heard him make no threat, nor utter any vindictiveness against the people; *Mr. Brewer* went out and brought in a promise that the people would not fire while negotiations were pending; cannot say that all the firing of *Capt. Brown* or his men was in self-

defense; heard *Brown* give frequent orders not to fire on unarmed citizens; the first firing was against the engine house; *Brown* said the people appeared to pay but little regard to the lives of the citizens, and we must take the chances with them; after the first attack on the engine house by the marines, there was not a general cry of "surrender;" one cried surrender, but the others fought on; *Brown* had a rifle in his hand when he was struck down by the marines, and received a cut over the head with a sword of *Lieutenant Green*.

Mr. Hunter laid before the jury the printed Constitution and ordinance of the Provisional Government, reading the two first clauses of the preamble, the 7th, 45th and 48th articles and briefly summing up other portions of the Constitution.

Sheriff Campbell. Know the handwriting of the prisoner; have copied a letter for him.

John Brown said he would himself identify any of his handwriting, and save all that trouble. He was ready to face the music.

Mr. Hunter preferred proving them by *Mr. Campbell*.

John Brown. Either way, as you please.

A large bundle of letters was produced. Each was identified by *Campbell* and handed to *Brown*, who, at the first glance, replied to each in a loud voice, "Yes, that is mine." The papers and letters were about fifty in number.

A list of members of the Convention was read. It was headed

William Charles Morris, President of the Convention; and H. Kagi, Secretary of the Convention. On handing the list to *Brown*, he exclaimed with a groan, "That's my signature."

In reference to another paper, he said, "I have nothing to say about that."

Mr. Hunter read a letter from J. R. Giddings, acknowledging the receipt of a letter from *Brown*, and that he would be pleased to see him at his house during the summer.

Mr. Hunter read a letter from Gerrit Smith about the "Kansas work." It had June B, 1859, indorsed on the back, in *Brown's* writing.

Armstead Ball. Am master machinist at the Armory, early in the morning was aroused by Benjamin Hobbs announcing that persons were at the Armory, carrying off government property; reached the gate, was accosted by two armed men, and seized as a prisoner; they refused to make any explanation until within the Armory yard; Stevens was sentry at the gate; was conducted to Capt. *Brown*, who told me his object was to free the slaves, and not the making of war on the people; that my person and private property would be safe; that his war was against the accursed system of slavery; that he had power to do it and would carry it out; it was no child's play he had undertaken; he then gave me permission to return to my family, to assure them of my safety and get my breakfast; started back home and was accompanied by two armed men, who stopped at the door; breakfast not being ready, went back, and was allowed to return

home again, under escort, at a later hour; on returning again to the Armory Capt. *Brown* said it was his determination to seize the arms and munitions of the government, to arm the blacks to defend themselves against their masters; *Brown* also made a proposition to me and other officers of the Armory to deliver into his possession the munitions of war belonging to the Government; I replied that they were already in his possession, as we were; *Brown* frequently told us our safety depended on the good conduct of our citizens; when the firing commenced all of us prisoners would crouch down to avoid the bullets; we were in danger, and almost any proposition that was made we would accept to secure our safety; *Brown* said if the citizens were willing to risk their lives and those of his prisoners, to capture him, they must abide by it; *Brown* made one proposition to go to the canal lock, give up his prisoners, and fight it out with the military; at daylight on Tuesday morning, I appealed to *Brown* on the ground of humanity to us, as well as to the men who appeared so bound to him, not to persist in spilling more blood; *Brown* replied that he was well aware of what he was about, and knew the consequences; that he was already proclaimed an outlaw, and \$3,500 was on his head; as to the killing of *Beckham*, one of *Brown's* party had fired in that direction several times; remonstrated with him when levelling his rifle at an old man named *Guess*, that he was not a combatant, and he desisted; afterwards heard him fire, and heard him say, "Dropped

him;" when he heard that Beckham was dead, the man who fired asked who he was; told him he was an old and respectable citizen, and mayor of the town, the man who fired expressed himself very sorry; that man was afterwards captured at the charge of the marines;⁴² [Capt Brown made preparations for resisting the marines; he was always in arms, but I do not think I saw him fire.]

To Mr. Green. We, as prisoners, agreed to such terms of capitulation as our citizens were willing to accept. The proposal was written by Mr. Dangerfield, and dictated by Brown. Do not know whether Brown's son and Stevens were wounded while they accompanied the citizens with the flag of truce. Did not know that any of them were Brown's sons, until I heard Brown say to Capt. Sinn, "there lies one of my sons dead, and here is another dying." Brown frequently remarked that the citizens were acting indiscreetly in persisting in firing on their own citizens; repeatedly said he would injure no one but in self-defense; Coppoc frequently urged us to seek places of safety, but Brown did not; he appeared to desire us to take care of ourselves, and at the time of the charge of the marines, told us we must equally occupy the post of danger with themselves. There were three or four slaves in the engine house; they had spears, but all seemed badly scared; Washington Phil was ordered by Brown to cut a port hole through the brick wall; he continued until a brisk fire commenced outside, when he said, "this is getting too hot for Phil," and he squatted. Brown then

took up the tool and finished the hole.

John H. Allstadt. Am a neighbor of Col. Washington. On Monday morning about three, was awakened from sleep by the crash of a fence rail against my door; asked who was at the door; the reply was, "Get up quick, or we will burn you up;" asked what they intended to do; they said, "Free the country of slavery;" they told me they were going to take me to Harper's Ferry; dressed myself, and when I got to the door they had all my blacks, seven in number; we were all put into the wagon; the negroes were all armed with pikes; all the men who took us were armed; we went to the Armory yard, where I was put in charge of one of Brown's party; afterwards we were ordered into the watch house; saw Col. Washington there; Brown came and spoke to us about our getting two negroes to take our places, and then he would release us; Brown's rifle was cocked all the time; the negroes were placed in the watch house with spears in their hands; they showed no disposition to use them; was afterwards transferred to the engine house; several negroes were there; saw Phil making port holes by Brown's order; the other negroes were doing nothing, and had dropped their spears; some of them were asleep nearly all the time; when the marines made the assault, Brown's party took position behind the engine and aimed at the door; Brown was in front, squatting with his gun levelled; he fired at the marines several times, my opinion is he killed that marine.

⁴² Edwin Coppoc.

To Mr. Green. Did not see any others shoot; cannot state certainly by what shot the marine was killed; he might have been killed by shots fired before the door was broken open; was much confused and excited at the time; heard regrets expressed at Beckham's being killed.

John T. Allstadt. Am the son of the last witness, aged eighteen; was at home the night the raiders came. When they led father and I outside we saw Col. Washington sitting in his own carriage. They put me and father in his four-horse wagon; behind us our six negroes and some of Col. Washington's stood up closely packed. As we drove inside the Armory an old man stood there. This, said Stevens, by way of introduction, is John Brown. Ossawatimie Brown, of Kansas, added the old man. He handed out pikes to the negroes and told them to keep us safely. There were no negroes that I saw there except Col. Washington's and ours. We arrived at the Armory about day-break. Were not taken inside until several men had fallen. In the intense excitement they let us walk up and down before the engine house but not on the east side where the gates were.

Saw Oliver Brown shot as he was in the act of firing himself from the engine house door. His wound was a mortal one and he suffered great pain; he died the night before we were relieved. He had asked his father again and again to shoot him to put an end to his agony but John Brown replied: "You will get over it," and "If you must die, die like a man." Heard John Brown talking to my father and Col. Wash-

ington while Oliver lay in the corner very quiet. Then his father called out to him, and as there was no answer, "I guess he is dead," said Brown.

Alexander Kelly. Saw Thomas Boerley killed on Monday. Boerley was an Irishman living in Harper's Ferry. Brown's party fired at me and I returned the fire. Boerley was with me on the street and was armed with a gun. Saw him soon after he was shot. The shot came from the direction of Shenandoah street.

Albert Cross. Sunday night I had been to meeting with my son; coming home across the Shenandoah bridge, was seized by two men with rifles; when we got to the end of the bridge, were stopped by a man with a spear; asked what was the matter; was the town under martial law; he told me I should not be hurt, and asked me whether there were many slave holders about Harper's Ferry; I told him no; Brown came up, and observed, "You have got some prisoners," they took us to the Armory; found some citizens there; being tired, we laid down; Brown said his object was to free the slaves; told him there were not many there; he replied, "The good book says we are all free and equal," and if we were peaceable we should not be hurt; there was some firing about that time; afterward, about 3 o'clock, was sent to tell the conductor that the train might pass unmolested; saw Mr. Beckham, and delivered the message; Brown then dismissed me; did not go home, being afraid some of Brown's men, not knowing this, might

shoot me; saw Hayward brought in, wounded.]

Mr. Kelly (recalled). Saw Geo. W. Turner⁴³ killed on High street; he was shot while in the act of levelling his gun; the shots came from the corner of Shendoah and High streets; the men who fired had rifles; one had a shawl on.

Henry Hunter.⁴⁴ Went to the Ferry with the Charlestown Guard; stayed on the bridge, leaving the company; went off fighting on my own hook; saw Beckham fall when shot; heard the whistling of the ball; undertook to go to his assistance, but was withheld by a friend; soon after, another person went to remove the body, saying he "would help the Squire;" heard the whistling of another ball; think that Beckham had a pistol in his coat pocket, judging from the weight and shape of the pocket;

did not see it, and don't think the people from the Armory yard saw it; the shot that killed Beckham came from the engine house; numerous shots were fired from the engine house at the tank.

Col. Gibson. Helped a portion of the militia of Jefferson County to suppress the insurrection; the Jefferson Guards and other detachments were in action; they were called out by authority of law; three insurgents were killed at the rifle factory and Copeland captured.

Cross-examined. There was firing by outside citizens, and the three were not killed by men under my command; don't think the insurgents fired a gun at the rifle factory, but endeavored to make their escape across the river.

Benjamin T. Bell. Went to Harper's Ferry armed; did not join the military; was stationed

⁴³ "About two o'clock the death of Mr. Turner, a slave-holder, a farmer of means and prominence in the vicinity of Harper's Ferry, still further inflamed the citizens. He rode to town carrying his shotgun and was shot in the neck and instantly killed. According to one narrative he was in the act of firing on two of the raiders when a bullet from them struck him. It was also related that he was killed while talking to a traveler who had strayed in from one of the delayed trains. George W. Turner was graduated from West Point, July 1, 1831. A second lieutenant in the 1st Artillery, he resigned June 30, 1836 and became a farmer in Rippon, Jefferson County. His sister lost her reason on hearing of her brother's death and died soon after of shock and grief." Villard, p. 641.

Mr. John G. Rosengarten (see his *Atlantic Monthly* article, *ante*, p. 710), was on his way from the West to Baltimore when the train being stopped outside, he strolled into Harper's Ferry to see what was going on. As he walked down the hill a person overtook him riding on horseback and with a gun in his hand. "He told me that a band of men were gathered to set the slaves free, and that after starting the outbreak the night before, they had taken refuge down below. He pointed with his gun, and we were standing side by side, when a sudden flash and a sharp report and a bullet stopped his story and his life." This was George W. Turner.

⁴⁴ Son of Andrew Hunter, the special Attorney for Virginia.

in the Galt House, in Capt. Botts' company; in the evening walked out on the platform; saw Beckham shot; went as near him as was safe, but perceived no breathing; there was firing from the engine house towards the railroad; Mr. Young, a member of the Jefferson Guards, was wounded while making a charge against the insurgents; saw oth-

ers shot; there were probably thirty shots fired from the engine house towards the tank and in other directions.

Cross-examined. There was general firing in almost every direction; McCabe was about firing when he was shot; there were twenty to thirty men firing at the engine house when Young and McCabe were wounded.

THE DEFENSE.

Joseph A. Brua. Was one of the prisoners in the engine house with Col. Washington and others; Brown remarked that the prisoners should share their danger; we were allowed to shelter ourselves as we could; Cross went out with Thompson with a flag of truce. Stevens and Watson Brown and Kitzmiller went out, and Stevens and Watson were shot; Brown came back badly wounded; after that it commenced raining very hard; supposed Stevens was dead; he lay near the corner of the depot; heard groaning, and saw Stevens moving; asked Brown to send a man to the relief of Stevens; Brown refused because he would be shot; I was allowed to go and assist Stevens into the hotel; returned to the engine house according to my pledge; was sent several times by Brown to request the citizens not to shoot, as the lives of the prisoners were endangered; negotiations were going on between Brown and the prisoners before the general firing commenced; Brown proposed that he should retain possession of what he held, including the Armory and negroes, and Col. Washington and the others

seemed to acquiesce in this arrangement; Cross was sent out to confer with Beckham and others on the subject; a guard went with him, who were fired upon; after that Stevens wanted to shoot, but Kitzmiller appealed to him and they went out together to stop the firing; when they did not return, Brown seemed to show temper, and there was a change in the arrangements; after that Brown said he had it in his power to destroy that place in half an hour, but would not do it unless resisted; think a shot from the water tank struck Coppoc; he then returned the fire, and Brown said "that man's down;" the special object of my going out was to see the firing from the tank, which was annoying to those in the guard house.

A. M. Kitzmiller. Made repeated efforts to accommodate matters with Brown; he said his object there was to free the slaves from bondage, and if necessary fight the pro-slavery men for that purpose; was first surprised, then indignant, and finally disgusted with Brown; he said to me, "There is a company of riflemen on the bridge; get them to go in company with Stevens;"

Mr. Hunter told them he was sorry they did not leave their guns; Stevens remarked that would not do; I had no flag and did not consider myself the bearer of a flag of truce; as to the rifle company on the bridge, I saw they were our own men, waved my handkerchief, and told the other man to remain; soon heard firing very close; Stevens fired in reply to a shot which struck him from the house by the Winchester railroad depot; Stevens swore and the other man returned; I think it was Brown's son; Stevens was shot before he fired back; Thompson, one of Brown's men, was a prisoner on the bridge.

The last I saw of Thompson he was a prisoner with the Ferry

people on the bridge; Moore, Burkhardt, Anderson and twenty or thirty others were there; Mr. Beckham was killed at or about the time Thompson was taken; did not return to the engine house; my object was to prevent unnecessary shedding of blood; went out at the request of Brown to use my influence for that purpose.

James Beller. Was at the Galt House with Chambers on Monday morning; Chambers fired, and I saw the man whom he shot lying there; did not know the man; supposed it was Stevens;⁴⁵ did not see any one with him when shot; he was shot before Captain Botts' company reached the Galt House.

Mr. Green stated to the Court that he desired to bring out testimony relative to the shooting of Thompson, one of the insurgents on the bridge.

The *State* objected, unless Brown had a knowledge of that shooting.

Mr. Hunter said there was a deal of testimony about Brown's forbearance and not shooting citizens, that had no more to do with this case than the dead languages.^{45a} If he understood the offer, it was to show that one of those men, named Thompson, a prisoner,

⁴⁵ It was not Stevens but Thompson.

^{45a} This defense was Brown's idea, as he himself wrote out these suggestions to his counsel:

We gave to numerous prisoners perfect liberty. *Get all their names.*

We allowed numerous other prisoners to visit their families to quiet their fears. *Get all their names.*

We allowed the conductor to pass his train over the bridge with all his passengers, I myself crossing the bridge with him and assuring all the passengers of their safety. *Get that conductor's name and the names of the passengers so far as may be.*

We treated all our prisoners with the utmost kindness and humanity. *Get their names so far as may be.*

Our orders from the first and throughout were that no unarmed person should be injured under any circumstances whatever. *Prove that by all the prisoners.*

We committed no waste or destruction of property. *Prove that.*

was dispatched after Beckham's death. The circumstances of the deed might be such as he himself might not at all approve. He did not know how that might be, but he desired to avoid any investigation that might be used. Not that it was so designed by the respectable counsel employed in the case, but because he thought the object of the prisoner in getting at it was for outdoor effect and influence. He therefore said if the defense should show that this prisoner was aware of these circumstances, and the manner in which that party was killed, and still exerted forbearance, he would not object. But unless the knowledge of it could be brought home to the prisoner and his after conduct, he could not see its relevancy.

Mr. Botts said they had already proved that for hours after that communications were held between the parties.

The COURT thought these facts admissible as evidence.

Mr. Hunter (recalled). After *Mr. Beckham*, who was my grand uncle, was shot, I was much exasperated, and started with *Mr. Chambers* to the room where the man *Thompson* was confined, with the purpose of shooting him. We found several persons in the room, and had levelled our guns at him, when *Mrs. Foulke's* sister threw herself before him and begged us to leave him to the laws. We then caught hold of him and dragged him out by the throat, he saying: "Though you may take my life, eighty million will rise up to avenge me, and carry out my purpose of giving liberty to the slaves." We carried him out to the bridge, and two of us, levelling our guns in this moment of wild exasperation, fired, and before he fell, a dozen or more balls were buried in him; we then threw his body over the tressel work and returned to the bridge to bring out the prisoner, *Stevens*, and serve him in the same way; we found him suffering from his wounds, and probably dying; we concluded to spare him, and start after the

others, and shoot all we could find; had just seen my beloved uncle and best friend I ever had, shot down by those villainous Abolitionists, and felt justified in shooting any that I could find; felt it my duty, and have no regrets. }

Wm. M. Williams. Was a watchman on the bridge; the night of the raid, about half-past ten, two men came up to me and told me that I was their prisoner. Did not know them,⁴⁶ but when I saw a crowd behind them, the prisoner at the bar and *Cook*, whom I had seen before, I thought it was a joke. But when they put a gun in my face and told me to follow and took me to the watch house, I saw it was serious. In the engine house where they took me in the afternoon, *Brown* told us to hide ourselves, or we would be shot by the people outside; he said he would not hurt any of us; *Brown* told *Mr. Cross* to tell the people to cease firing, or he would burn the town; but if they didn't molest him, he wouldn't molest them; heard two shots on the

⁴⁶ They were *Kagi* and *Stevens*.

bridge about the time the express train arrived; did not see Hayward killed.

John Brown. State what was said by myself, and not about his being shot.

Williams. I think you said that if he had taken care of himself, he would not have suffered.

Reason Cross. Prepared a proposition that Brown should retain possession of the Armory, that he should release us, and that the firing should stop.

John Brown. Were there two written propositions drawn up while you were prisoner?

Cross. Yes, there was another paper prepared by Kitzmiller, and some others; I went out to stop the firing; a man went with me and they took him prisoner and tied him; this was Thompson, who was afterwards taken out and shot; Brown's treatment of me was kind and respectful; heard him talk roughly to some men who were going in to where the blacks were confined.

John Brown, rising from his mattress, and standing on his feet: May it Please the Court: I discover that, notwithstanding all the assurances I have received of a fair trial, nothing like a fair trial is to be given me, as it would seem. I gave the names as soon as I could get at them, of the persons I wished to have called as witnesses, and was assured that they would be subpoenaed. I wrote down a memorandum to that effect, saying where those parties were; but it appears that they have not been subpoenaed as far as I can learn; and now I ask if I am to have anything at all deserving the name and shadow of a fair trial, that this proceeding be deferred until tomorrow morning; for I have no counsel, as I before stated, in whom I feel that I can rely, but I am in hopes counsel may arrive who will attend to seeing that I get the witnesses who are necessary for my defense. I am myself unable to attend to it. I have given all the attention I possibly could to it, but am unable to see or know about them, and can't even find out their names; and I have nobody to do any errand, for my money was all taken when I was sacked and stabbed, and I have not a dime. I had two hundred and fifty or sixty dollars in gold and silver taken from my pocket, and now I have no possible means of getting anybody to go my errands for me, and I have not had all the witnesses subpoenaed. They are not within reach, and are not here. I ask at least until tomorrow morning to have something done, if anything is designed; if not, I am ready for anything that may come up.

John Brown then lay down again, drew his blanket over him, closed his eyes and appeared to sink in tranquil slumber. [

Mr. Hoyt. May it please the Court: I would add my voice to the appeal of Mr. Brown, although I have had no consultation with him, that the further hearing of the case may be postponed until morning. I would state the reason of this request. It was that I was informed, and had reason to believe, that Judge Tilden of Ohio was on his way to Charlestown, and would undoubtedly arrive at Harper's Ferry at 7 o'clock tonight. I have taken measures to insure that gentleman's arrival in this place tonight, if he reaches the Ferry. For myself, I have come from Boston, travelling night

and day, to volunteer my services in defense of Brown. I could not undertake the responsibility of his defense as I am now situated. The gentlemen who have defended Brown acted in an honorable and dignified manner in all respects, so far as I know, but I cannot assume the responsibility of defending him myself for many reasons. First it would be ridiculous in me to do it, because I have not read the indictment through—have not, except so far as I have listened to the case and heard counsel this morning, got any idea of the line of the defense proposed, and have no knowledge of the criminal code of Virginia, and no time to read it. I had no time to examine the questions arising in this defense, some of which are of considerable importance, especially that relative to the jurisdiction over the Armory grounds. For all these reasons, I ask the continuation of the case till tomorrow morning.

Mr. Botts. In justice to myself I must state that, on being first assigned as counsel to Mr. Brown, I conferred with him, and at his instance took down a list of the witnesses he desired subpoenaed in his behalf. Though it was late at night, I called up the sheriff and informed him that I wished subpoenas to be issued early in the morning. This was done, and there are here Messrs. Phelps, Williams and Cross, and they have been examined.

Sheriff Campbell stated that the subpoenas were placed in the hands of an officer, with the request to serve them at once. He must have served them, as some of the witnesses are here. The process has not been returned, and may have been sent by private hands and failed to arrive.

Mr. Botts thought they had shown, and he was confident he spoke the public sentiment of the whole community, when he said they wished Mr. Brown to have a fair trial.

Mr. Hunter. I do not rise for the purpose of protracting the argument, or interposing the slightest impediment in the way of a fair trial. This is fair. Whether it was promised to Brown or not, it is guaranteed by our laws to every prisoner; and, so far as I am concerned, I have studiously avoided suggesting anything to the Court which would in the slightest degree interfere with it. I beg leave to say, in reference to this application, that I suppose the Court, even under these circumstances, will have to be satisfied in some way, through counsel or otherwise, that this testimony is material testimony. So far as any witness has been examined, the evidence relates to the conduct of Captain Brown in the treating of his prisoners with leniency, respect and courtesy, and this additional matter, that his flags of truce—if you choose to regard them so—were not respected by the citizens, and that some of his men were shot. If the defense choose to take that course, we are perfectly willing to admit these facts in any form they desire. Unless the Court shall be satisfied that this testimony (which, I have no doubt, is every particle of it here), which could be got, is really material to the defense, I submit that the application for delay on that score should not be granted. Some of these witnesses have been here, and might have been asked to remain. A host of witnesses have been

here, and have gone away without being called on to testify. I simply suggest that it is due, in justice to the Commonwealth, which has some rights, as well as the prisoner, that information be given to the Court, showing that additional testimony is relevant to the issue. The simple statement of counsel I do not think would be sufficient.

Mr. Green. Mr. Botts and myself will now withdraw from the case, as we can no longer act in behalf of the prisoner, he having declared here that he has no confidence in the counsel who have been assigned him. Feeling confident that I have done my whole duty, so far as I have been able, after this statement of his, I should feel myself an intruder upon this case were I to act for him from this time forward. I had not a disposition to undertake the defense, but accepted the duty imposed on me, and I do not think, under these circumstances, when I feel compelled to withdraw from the case, that the Court could insist that I should remain in such an unwelcome position.]

Mr. Harding. We have been delayed from time to time by similar applications, in the expectation of the arrival of counsel, until we have now reached the point of time when we are ready to submit the case to the jury upon the evidence and the law, when another application arises for a continuance. The very witness that they now consider material, Mr. Dangerfield, came here, summoned by ourselves, but deeming that we had testimony enough, we did not examine him.

THE COURT. The idea of waiting for counsel to study our code through, could not be admitted; as to the other ground, I do not know whether the process has been executed or not, as no return has been made.

Mr. Botts. I have endeavored to do my duty in this matter, but I cannot see how, consistly with my own feelings, I can remain any longer in this case, when the accused whom I have been laboring to defend, declares in open court that he has no confidence in his counsel. I make this suggestion, that as I now retire from this case, the more especially since there is now here a gentleman from Boston, who has come on to volunteer his services for the prisoner, that the Court allow him this night for preparation. My notes, my office and my services are at his command. I will sit up with him all night to put him in possession of the law and facts in relation to this case. I cannot do more; and in the meantime, the sheriff can be directed to have the other witnesses here tomorrow.

THE COURT would not compel the gentlemen to remain on the case, and accordingly grants the desired postponement.

October 29

JUDGE PARKER announced that he had received a note from the new counsel of the prisoner, requesting a delay for a few minutes, to enable them to have an interview with the prisoner. He would accordingly wait a short time.

John Brown was brought in, and took his usual recumbent position in bed.

Samuel Chilton,^{46a} of Washington City, and *Hiram Griswold*,^{46b} of Cleveland, Ohio, were introduced to the Court as counsel for the prisoner.

Mr. Chilton thought it was due to himself to make an explanatory statement before the trial proceeded. Yesterday he was very unexpectedly called upon to come here, and aid in the defense of the prisoner. Knowing from the newspapers that the trial was in progress, he took time to consider and consult his friends as to the propriety of accepting the proposition. He would have had no hesitation if he had been spoken to in time, but his friends advised him to come, and he did so with the expectancy of merely assisting the gentlemen already conducting the defense. Upon reaching here, he found that they had withdrawn from the case, and he then hesitated about undertaking it; but upon consultation with the prisoner and his friends here, they insisted he should do so, and he would do the best he could, not feeling at liberty, under the circumstances, to refuse. These circumstances, however, would render it impossible for him to discharge the full duty of counsel, not having had time

^{46a}CHILTON, SAMUEL. (1804-1867.) Born Warrenton, Va. Studied and practiced law in his native town, and died there. Was a member of the Virginia House of Representatives for several terms, and a delegate to the State Constitutional Convention. Elected (a Whig) to the 28th Congress, 1835-1837. "Sam Chilton, of Fauquier, was a man of fair talents and as a lawyer excelled as a criminal pleader." Wm. and Mary Coll. His. Mag., 1906-7, p. 91.

^{46b}GRISWOLD, HIRAM. A lawyer of Cleveland, Ohio, where he practiced up to the year 1862, and perhaps later. Was reporter of the Ohio Supreme Court from 1845 to 1850. Was of New England birth. Was a State Senator, 1856-1858.

"Resolutions in favor of Harrison and Tyler . . . were presented from the committee by Judge John C. Wright, of Hamilton, Hon. Alfred Kelly, of Franklin, and Hon. Hiram Griswold, of Stark." —Norton, *Great Revolution of 1840*, p. 46. "In 1840 one of the framers of the platform upon which W. H. Harrison was elected was Hiram Griswold, of Stark county." Randall and Ryan, *Rise and Progress of an American State*, IV, 27. "Judge Griswold, of Ohio, was a strong, conscientious, able lawyer, who did not at all like the work he had undertaken at the request of Judge Tilden. . . . He did his work well as a lawyer, and got away as soon as it was done." Hinton, *John Brown and His Men*. "When John Brown, the late of Harper's Ferry, was about to be put upon trial, he applied to his friends, D. R. Tilden and D. K. Carter, both of Cleveland, and ex-members of Congress, to come, one or both, or send counsel for his defense. They, with others, applied to me. I was then absent. Before my return, Hiram Griswold had volunteered and gone. I was a little reluctant to appear with him in the case, and so much time had elapsed that I finally declined the undertaking, to my lasting regret." Albert Gallatin Riddle, *Recollections of War Times*, 1895, p. 3, footnote.

to read the indictment or examination already given. He made no motion for delay; this was a matter entirely within the discretion of the Court, and if the Judge thought proper to refuse to grant any postponement, he knew it would be done under a sense of duty. Those extraordinary circumstances would also render it impossible for his associate, Mr. Griswold, to discharge his full duty as counsel. A short delay of a few hours, if the Court thought proper to grant it, would enable them to make some preparation.

The COURT said the trial must go on. Counsel had been assigned to the prisoner here, of his own selection, who had labored zealously in his behalf, and had withdrawn because the prisoner had yesterday evening declared in open court that he had no confidence in them. No obstacle had at any time been thrown in the way of the prisoner's having an ample defense. If this was the only case of the kind before the Court, he would at once grant the request, but several similar cases remain to be disposed of. This term will very soon end, and it was his duty to endeavor to get through with all the cases, if possible, in justice to the prisoners, and in justice to the State. The trial must therefore proceed.

Mr. Hoyt. I handed to the clerk, last night, a list of names we wished summoned as witnesses—Samuel Strider, Henry Ault, Benjamin Mills, John E. P. Dangerfield and Captain Sinn. I got a dispatch just now informing me that Capt. Sinn had gone to Frederick, and would return in the first train in the morning, and come on to Charlestown this afternoon. I should like to inquire whether the process had reached Capt. Sinn at Harper's Ferry?

Sheriff Campbell replied that the officer stated that Capt. Sinn had gone to Frederick.

Mr. Hunter. He was here yesterday. I hope we will proceed with some other witnesses.

*John P. Dangerfield.*⁴⁷ Am paymaster at the Armory. About daylight on Monday morning one of my men came to my room and told me there was war on the streets. Got dressed and went out to my office at the Armory enclosure about 100 yards from my dwelling. When I got there several men came out; inquired what all this meant; they said they had taken possession of the government works. I said, "you talk like crazy men." They answered, "not so crazy as you think, you will soon see." With

this the men displayed (which I had not noticed before) under their short drabs, Sharp rifles, pistols and knives. I thought it time to beat a retreat, but one of them cocked his gun and told me I was a prisoner, and told me to come to Captain Smith. When we got to the Armory I saw negroes with pikes, and white men with guns all around and was turned over to Captain Smith. He asked me if I knew Col. Washington and others, and when I said yes, he said, pointing to the engine room. "You

⁴⁷ Mr. Dangerfield was afterwards in charge of the Confederate Army at Goldsboro, N. C., with the rank of Captain. See his article, *ante*, p. 710.

will find them all in there." I was taken over there. Shortly after the citizens began firing at the Armory, and soon Smith (as we called him) told his men to retreat to the engine house, and he picked a number of his prisoners, including myself, and took us with him. When we got inside, he said: "Gentlemen, perhaps you wonder why I have selected you; it's because I think you are the most influential. You will have to share the fate that your friends extend to us." He ordered the doors and windows barred and had holes cut in the walls to fire through. Then the firing began. About 2 in the morning Lieut. Stuart appeared at the door with a flag of truce. When he was admitted and a light brought, he said: "Why ain't you old Ossawatimie Brown of Kansas, whom I once had there as my prisoner?" "Yes," said Brown, "but you did not keep me." This was the first intimation we had as to the true name of the raiders' leader. He handed him a paper, which he said was the demand of Colonel Lee, who was in command of the United States troops. Brown took it and read it. He said that he had been sent by the President of the United States to suppress the insurrection and he demanded the surrender of the prisoners in the building. If they did so he would promise to keep them safe and await the President's orders. There was no hope of escape, the Armory was surrounded on all sides by troops, and if he had to take him and his companions by force, he could not answer for their safety. Lieut. Lee advised Brown to trust the clemency of the government, but Brown replied he

knew what that meant; a rope for his men and himself, adding, "I prefer to die just here." Lieut. Stuart only said that he would return at daylight for his final reply and went away.

Just about daylight I heard a noise—none of the raiders had gone to sleep, I think, that night. It was Lieut. Stuart at the door saying he had come for the answer. I got up from the floor and went to Brown's side to hear. Stuart asked: "Are you ready to surrender and trust to the mercy of the government?" Brown promptly answered: "No, I prefer to die here." Lieut. Stuart, who had been standing in the partly opened door, at once stepped aside and in a moment there was a great battering on the door as of sledge hammers. I had assisted in the barricading and had fixed the fastenings so that I could easily remove them. Then I heard the battering and commenced to remove them, when the end of a ladder came through and a big aperture was made, through which an officer and some marines jumped.

Am free to say, that from the treatment of Captain Brown, I had no personal fear of him or his men during my confinement. Saw one of the men shot in the engine house. He fell back, exclaiming, "It's all up with me," and died in a few moments. This man was one of Capt. Brown's sons. Saw another young man who came in wounded, and commenced to vomit blood. He was also a son of Captain Brown, and was wounded while out with Mr. Kitzmiller. Brown frequently complained that his men were shot down while carrying a flag of truce.

Mr. Hunter complained that they were going over again the same facts that were elicited; and all this was freely admitted by the defense.

Mr. Hoyt said that he regarded it as the only feasible line of defense to prove these facts. It was the duty of counsel to show, if possible, that Capt. Brown was not guilty of treason, murder or insurrection, according to the terms of this indictment. We hope to prove the absence of malicious intention.]

Mr. Hunter was frank to admit that he could not but regard this course as merely calculated to waste time.

Mr. Hoyt reminded the Court that the course being pursued was not only in accordance with their conviction of duty, but in accordance with the express commands of their client.

The COURT remarked that the counsel was responsible to the Court to conduct the case according to the rules of practice.

Mr. Hoyt thought the language of the prosecution was calculated to impugn the honor of the counsel for the prisoner.

Mr. Hunter. Nothing of the kind was intended. It is presumed the gentlemen will conduct the case in accordance with their duty as counsel, and their responsibility to the Court.

Mr. Dangerfield. Heard some conversation by Captain Brown as to having it in his power to lay the town in ashes and carrying off the women and children, but that he had refrained from so doing; heard him make no threats that he would do so; the only threat I heard from him was at the commencement of the storming of the engine house; he then said we must all take equal shares with him, that we could no longer monopolize the places of safety; he made no attempt to deprive us of the places we had taken; Brown promised safety to all descriptions of property except slave property; had a conversation with Brown during the night and told him that he and his men were committing treason against the State and the United States. Two of his men hearing me, said to Brown: "Are we committing treason against the

country by being here." Brown said: "Certainly," and then both said if that was so, they did not want to fight any longer. They thought they were to liberate slaves, not to commit treason. After the attack two of Brown's men who had said they did not want to commit treason, cried for quarter, and laid down their arms but after the marines burst open the door, they picked them up again and renewed the fight and were both killed; after the first attack Capt. Brown cried out "surrender," but he was not heard; did not see him fire afterwards; saw Coppoe attempt to fire twice; but the caps exploded; saw Brown wounded on the hip by a thrust from a sabre, and several sabre cuts on his head; when the latter wounds were given, Capt. Brown appeared to be shielding himself, with his head down, but making no resistance⁴⁸

⁴⁸ Lieutenant Green gave the following account of the attack and his share in it: When Lieutenant Stuart started to take Colonel Lee's demand to Brown it was agreed between us that if Brown should re-

the parties outside appeared to be firing as they pleased.

Mayor Mills. Was one of the hostages of Capt. Brown, confined in the engine house; before the general firing commenced, negotiations were pending for the release of the prisoners; a paper was drawn up, embracing certain terms, and born by Mr. Brua to the citizens outside; the terms

were not agreed to; the last time Mr. Brua was out, there was severe firing, which I suppose prevented his return; Brown's son went out with a flag of truce, and was shot; he came back wounded; prisoner attended him and gave him water; heard Brown frequently complain that the citizens had acted in a barbarous manner; he did not appear to

refuse to surrender he would wave his hat as the signal that the storming party should begin the attack. Suddenly Lieutenant Stuart waived his hat, and I gave the order to my men to batter in the door. Those inside fired rapidly at the point where the blows were given upon the door. Very little impression was made with the hammers, as the doors were tied on the inside with ropes and braced by the hand brakes of the fire engines, and in a few minutes I gave the order to desist. Just then my eye caught sight of a ladder lying a few feet from the engine house in the yard, and I ordered my men to catch it up and use it as a battering ram. The reserve of twelve men I employed as a supporting column for the assaulting party. The men took hold bravely and made a tremendous assault upon the door. The second blow broke it in. This entrance was a ragged hole low down in the right hand door, the door being splintered and cracked some distance upward. I instantly stepped from my position in front of the stone abutment, and entered the opening made by the ladder. At the time I did not stop to think of it, but upon reflection I should say that Brown had just emptied his carbine at the point broken by the ladder, and so I passed in safely. Getting to my feet, I ran to the right of the engine which stood behind the door, passed quickly to the rear of the house, and came up between the two engines. The first person I saw was Colonel Lewis Washington, who was standing near the hose cart at the front of the engine house. On one knee, a few feet to the left, knelt a man with a carbine in his hand just pulling the lever to reload.

"Hello, Green," said Colonel Washington, and he reached out his hand to me. I grasped it with my left hand, having my saber up-lifted in my right, and he said, pointing to the kneeling figure, "This is Ossawatomie."

As he said this, Brown turned his head to see who it was to whom Colonel Washington was speaking. Quicker than thought I brought my saber down with all my strength upon his head. He was moving as the blow fell, and I suppose I did not strike him where I intended, for he received a deep saber cut in the back of the neck. He fell senseless on his side, then rolled over on his back. He had in his hand a short Sharp's cavalry carbine. I think he had just fired as I reached Colonel Washington, for the marine who followed me into the aperture made by the ladder received a bullet in the abdomen, from which he died in a few minutes. The shot might have been

have any malicious feelings; he undoubtedly seemed to expect reinforcements; said it would soon be night and he would have more assistance; his intentions were to shoot nobody unless they were carrying or using arms; if they do, he said, let them have it; this was while the firing was going on.

John Brown. Did you see firing on my part which was not purely defensive? It might be considered in that light, perhaps; the balls came into the engine house pretty thick. Did not hear you say that you had surrendered. My wife and daughter were permitted to visit me unmolested, and free verbal communication was allowed with those outside. We were treated kindly but were compelled to stay where we didn't want to be. You appeared anxious to effect a compromise.

Captain Sinn. Am commander of a volunteer company of Frederick, Md. The report came to Frederick that 750 blacks and abolitionists combined had seized Harper's Ferry; I started for the Ferry with the volunteers under command of Col. Shriver, and was glad to find their numbers were exaggerated, after I reached

there on Monday afternoon; the door of the engine house was partially open, and I was hailed from there; two shots had been fired from there; went in; met Mr. Dangerfield and others there; Capt. Brown, who was wearing Washington's historical sword, said to me that he had a proposition to make; he wanted to be allowed to go over the bridge unmolested, and we then might take him if we could; he had fought Uncle Sam before, and was willing to do it again; Brown complained that his men had been shot down like dogs, while bearing a flag of truce. Told him they must expect to be shot down like dogs if they took up arms in that way. Brown said he knew what he had to undergo before he came there—he had weighed the responsibility and should not shrink from it; he said he had full possession of the town and could have massacred all the inhabitants had he thought proper to do so; but as he had not, he considered himself entitled to some terms; Brown said he had shot no one who had not carried arms; told him that Mayor Beckham had been killed, and that I knew he

fired by some one else in the insurgent party, but I think it was from Brown. Instinctively as Brown fell I gave him a saber thrust in the left breast. The sword I carried was a light uniform weapon, and either not having a point or striking something hard in Brown's accouterments, did not penetrate. The blade bent double.

By that time three or four of my men were inside. They came rushing in like tigers, as a storming assault is not a playday sport. They bayoneted one man skulking under the engine, and pinned another fellow up against the rear wall, both being instantly killed. I ordered the men to spill no more blood. The other insurgents were at once taken under arrest, and the contest ended. The whole fight had not lasted over three minutes. My only thought was to capture, or if necessary kill, the insurgents, and take possession of the engine house. *North American Review*, December, 1885.

was altogether unarmed; he seemed sorry to hear of his death and said, I fight only those who fight me. I told prisoner that I did not think any compromise could be effected; Brown said he kept the hostages for his own safety; they did not appear to fear any injury from him or his

men, but only from attacks from the outside, for every man outside had a gun and four-fifths of them were under no command. Later that night Mr. Samuel Strider carried a summons to surrender, going up to the engine house with a handkerchief tied to an umbrella.⁴⁹ The military had

⁴⁹ "It was now near nightfall and the gathering gloom of a drizzly evening began to obscure surrounding objects, making it so difficult to distinguish them that, as if by common consent on both sides, active operations were suspended.

"At this time a conference was held by three or four of the principal officers in command, to which two or three civilians, including myself, were invited, the object of the consultation being to determine whether or not to take the engine house by assault at once, or to wait until morning.

"It represented to us by the prisoners whom Brown had released, when he selected out of their number nine or ten to be held as hostages in the engine house that, if an attempt should be made to carry it by storm at night, it would be impossible to distinguish the hostages from the insurgents; and that Brown would probably place the former in front of his own party as a protection, and thereby cause them to receive the brunt of the attack.

"It was also urged that the raiders were then as securely imprisoned in their place of refuge as if incarcerated in the county jail, and could be taken in the morning without much risk to our friends. Before deciding the question under consideration, it was thought proper, at any rate, to send Brown a summons to surrender, and a respectable farmer of the neighborhood, Mr. Samuel S. was selected to make the demand, a duty which he undertook very willingly, although it was not unattended with danger, as the usages of ordinary warfare had been more than once disregarded, during the day, by the belligerents on both sides. Mr. S. was a man of indomitable energy, undoubted in courage, and of such a genial disposition as to make him a general favorite; but he was somewhat eccentric and occasionally was betrayed into those peculiarities of speech which characterized the conversation of Mrs. Malaprop.

"Tying a white handkerchief on the ferule of a faded umbrella, he went forth upon his mission with a self-imposed gravity becoming his own appreciation of its importance.

"Marching up to the door of the engine house, he called out in stentorian tones:

" 'Who commands this fortification?'

" 'Captain Brown, of Kansas,' was the answer from within the building.

" 'Well, Captain Brown, of Kansas,' continued Mr. S., with his voice pitched in the same high key, 'I am sent here, sir, by the au-

ceased firing, but men who were intoxicated were firing their guns in the air, and others at the engine house; Brown or any of his men could not have ventured outside the doors of the engine house that night without being shot; saw Stevens in the hotel after he had been wounded and shamed some young men who were endeavoring to shoot him as he lay in his bed apparently dying; told them that if the man could stand on his feet with a pistol in his hand they would all jump out of the window. I returned here at the summons of

the prisoner to testify in his behalf, with as great alacrity as I had come to testify against him. Have no sympathy for the acts of the prisoner; for his movement, on the contrary, I would be one of the first to bring him to punishment. But I regard Capt. Brown as a brave man, and being informed that he wanted me here as a witness, returned with pleasure. As a southern man, I came to state the facts about the case, so that northern men would have no opportunity of saying that southern men were unwilling to appear as witnesses

thorities in command for to summon you to surrender; and, sir, I do it in the name of the Commonwealth of old Virginia—God bless her!”

“‘What terms do you offer?’ inquired Brown.

“‘Terms!’ exclaimed S., ‘I heard nothing said about them, sir, by those who sent me. What terms do you want?’

“‘I want to be allowed,’ said Brown, ‘to take my men and prisoners across the bridge to Maryland and as far up the river as the lock-house (which was about a mile above) where I will release the prisoners unharmed, provided no pursuit shall be made until I get beyond that point.’

“To which S. replied by saying, ‘Captain, you’ll have to put that down in writing.’

“‘It’s too dark to write,’ answered Brown.

“‘Pshaw!’ said S., ‘that’s nonsense, for you needn’t tell me that an old soldier like you hasn’t got all the modern conveniences. So, if you don’t write your terms down in black and white, I won’t take ’em back to those who sent me.’

“Thereupon a light was struck in the engine house, and presently a piece of paper was handed out to S., on which Brown had written what he wished to have accorded him.

“The proposed terms were, of course, inadmissible, and after the paper containing them had been read by two or three of us, it was handed to Lawson Botts, who threw it contemptuously upon the floor, and placing his foot on it, said:

“‘Gentlemen, this is adding insult to injury. I think we ought to storm the engine house and take those fellows without further delay.’

“But the representations of the released prisoners, already mentioned, caused the contemplated assault to be postponed for the night.” Mr. Boeteler in the *Century*, July, 1885.

in behalf of one whose principles they abhorred.⁵⁰]

Israel Russell. Was the bearer of a flag of truce from Brown's party to the citizens of the Ferry and corroborated the facts stated by previous witness.

Terence Burns. Was taken prisoner by Capt. Cock and two others; was one of the ten hos-

tages confined in the engine house; Brown had five or six of his men there; he did not give any reason to us why we were put there, except that it was for his own safety; he said he did not think any attack would be made upon the engine house while hostages were there.

[*Mr. Chilton* submitted a motion that the prosecution in this case be compelled to elect one count of the indictment and abandon the others. The indictment consists of four counts, and is indorsed thus: "An indictment for treason, and advising and conspiring with slaves and others to rebel;" the charge of treason is in the first, and the second count alleges a charge different from that which is indorsed on the back of the indictment, and which is upon record. The second count is under the following statute: "If a free person advise or conspire with a slave to rebel or make an insurrection, he shall be punished with death, whether such rebellion or insurrection be made or not."

But the second count of the indictment is that these parties, who are charged by the indictment, "conspired together," with other persons, to induce certain slaves, the property of Messrs. Allstadt and Washington, to make rebellion and insurrection. There is a broad distinction between advising and conspiring with slaves to rebel, and conspiring with others to induce slaves to rebel. Whether I am to avail myself of their irregularity by instruction from the Court to the jury to disregard this second count entirely, or whether it would be proper to wait until the conclusion of the trial, and then move in arrest of judgment, I leave his honor to decide. The prosecution should be compelled to elect one count and abandon the others. A hardship now rests upon the prisoner to meet various and distinct charges in the same trial. In a case of treason, different descriptions of treason could not be united in the same indictment: high treason could not be associated with other treason. If an inferior grade of the same character could not be included in separate counts, still less can offenses of higher grade. Treason in this country is high treason. Treason against the State of Virginia is treason against her sovereignty. We have no other description of treason, because treason can only be committed against sovereignty, whether that of the United States, or of a sovereign State.

[*Mr. Harding.* In regard to separate offenses being charged, these were but different parts of the same transaction. Treason against

⁵⁰ "For Captain Sinn's 'manly and truthful' testimony John Brown afterwards thanked him." *New York Tribune*, October 31, 1859.

the Government is properly made the subject of one of the counts. But we also have a count of murder, for it can hardly be supposed that treason can exist without being followed or accompanied by murder. Murder arose out of this treason, and was the natural result of this bloody conspiracy; yet, after all the evidence has been given on all these points, the objection is made that we must confine ourselves to a single one of them.]

Mr. Hunter. The discretion of the Court compelling the prosecution to elect on one count in the indictment, is only exercised where great embarrassment would otherwise result to the prisoner. As applied to this particular case, it involved this point, that notwithstanding the transaction as has been disclosed by the evidence, be one transaction, a continued, closely connected series of acts, which, according to our apprehension of the law of the land, involves the three great offenses of treason, conspiring with and advising slaves to make insurrection, and the perpetration of murder, whether in a case of this character, it is right and proper for the Court to put the prosecution upon their election, as to one of the three, and bar us from investigation of the two others, although they relate to facts involved in one grand fact. Notwithstanding the multiplicity of duties devolving upon the prosecutor and assistant prosecutors, yet we have found time to be guarded and careful in regard to the mode of framing the indictment. It is my work, and I propose to defend it as right and proper. Chitty's Criminal Law and Robinson's Practice prove that the discretion of the Court there spoken of in reference to the furthering of the great object in view was the attainment of justice. Where the prisoner is not embarrassed in making his defense, this discretion is not to be exercised by the Court, and no case can be shown where the whole ground of the indictment referred to one and the same transaction. This very case in point would show the absurdity of the principle, if it were as broad as contended for by my learned friend. As to the other point of objection, it is too refined and subtle for my poor intellect.

Mr. Chilton. In order to ascertain what a party is tried for we must go to the finding of the Grand Jury. If the Grand Jury return an indictment charging the party with murder, finding a true bill for that, and he should be indicted for manslaughter or any other offense, the Court would not have jurisdiction to try him on that count in the indictment. And the whole question turns on the construction of the section of the statute which has been read, viz.: whether or not advising or conspiring with slaves to rebel is a separate and distinct offense from conspiring with other persons to induce it.

The COURT said the difference might perhaps be taken advantage of to move in arrest of judgment; but the jury had been charged and had been sworn to try the prisoners on the indictment as drawn. The trial must go on, and counsel could afterward move in arrest of judgment. As to the other objection, the very fact that the offense can be charged in different counts varying the language and circumstances, is based upon the idea that distinct offenses may be

charged in the same indictment. The prisoners are to be tried on the various counts as if they were various circumstances. There is no legal objection against charging various crimes in the same indictment. The practice has been to put a party upon election where the prisoner would be embarrassed in his defense; but that is not the law. In this case, these offenses charged are all part of the same transaction, and no case is made out for the Court to interfere and put the parties upon an election.

Mr. Chilton. We will reserve the motion as a basis for a motion in arrest of judgment.

Mr. Griswold. The position of all the present counsel of the prisoner is one of very great embarrassment. They had no disposition to interfere with the course of practice, but it was the desire of the defendant that the case should be argued. I supposed that counsel could obtain sufficient knowledge of the evidence previously taken by reading notes of it. But it is now very nearly dark. If it was to be argued at all, I suppose the argument for the Commonwealth will probably occupy the attention of the Court until the usual time for adjournment, unless it was the intention to continue with a late evening session. From what has heretofore transpired I feel a delicacy in making any request of the Court, but knowing that the case is now ended, except for mere argument, I do not know that it would be asking too much for the Court to adjourn after the opening argument on behalf of the prosecution.

Mr. Hunter. I bear testimony to the unexceptional manner in which the counsel who has just taken his seat has conducted the examination of witnesses today. It would afford me a very great pleasure in all ordinary cases to agree to the indulgence of such a request as the gentleman has just made, and which is entirely natural. But I am bound to remember and respectfully remind the Court that this state of things, which places counsel in a somewhat embarrassing position in conducting the defense is purely and entirely the act of the prisoner. His counsel will not be responsible for it; the Court is not responsible for it, but the unfortunate prisoner is responsible for his own act in dismissing his faithful, skillful, able and zealous counsel on yesterday afternoon. I would simply say that not only are the jurors kept away from their families by their delays, but there cannot be a female in this county who, whether with a good cause or not, is not trembling with anxiety and apprehension. While courtesy to the counsel and humanity to the prisoner should have due weight, yet the Commonwealth has its rights, the community has its rights, the jury have their rights, and it is for his Honor to weigh these in opposite scales, and determine whether we should not go on and bring this case to a close tonight. We have until twelve o'clock to do it in.

Mr. Chilton said their client desired that they should argue his case. It was impossible for him to do so now, and he could not allow himself to make an attempt at argument on a case about which he knew so little. If he were to get up at all, it would be for the un-

worthy purpose of wasting time. He had no such design; but having undertaken this man's cause, he very much desired to comply with his wishes. He would be the last man in the world to subject the jurors to inconvenience unnecessarily, but although the prisoner may have been to blame, may have acted foolishly, and may have had an improper purpose in so doing, still he could not see that he should therefore be forced to have his case submitted without argument. In a trial for life and death, we should not be too precipitate.

JUDGE PARKER consulted with the jurors, who expressed themselves very anxious to get home.

JUDGE PARKER said he was desirous of trying this case precisely as he would try another, without any reference at all to outside feelings.

Mr. Hoyt said that he was physically incapable of speaking tonight, even if fully prepared. He had worked very hard last night to get the law points; until he fell unconscious from exhaustion and fatigue. For the last five days and nights he had only slept ten hours, and it seemed to him that justice to the person demanded the allowance of a little time in a case so extraordinary in all respects as this.

The COURT suggested that it might have the opening argument for the prosecution tonight, at any rate.

Mr. Harding would not like to open the argument now, unless the case was to be finished tonight. He was willing, however, to submit the case to the Jury without a single word, believing they would do the prisoner justice. The prosecution had been met not only on the threshold but at every step with obstructions to the progress of the case. If the case was not to be closed tonight, he would like to ask the same indulgence given to the other side, that he might collate the notes of the evidence he had taken.

The COURT inquired what length of time the defense would require for argument on Monday morning. He could then decide whether to grant the request or not.

Mr. Chilton stated that there would be only two speeches by himself and *Mr. Griswold*, not occupying more than two hours and a half in all.

Mr. Hunter again entered an earnest protest against delay.

The COURT. Then you can go on yourselves.

Mr. Harding commenced the opening argument for the Commonwealth, and spoke for about forty minutes. He reviewed the testimony as elicited during the examination, and dwelt for some time on the absurdity of the claim or expectation of the prisoner that he should have been treated according to the rules of honorable warfare. Brown seemed to have lost sight of the fact that he was in command of a band of murderers and thieves, and had forfeited all right to protection of any kind.

The COURT adjourned at 5 o'clock until 9 o'clock Monday morning.

October 30.

THE SPEECHES TO THE JURY.

Mr. Griswold. May it please your Honor and Gentlemen of the Jury: Since the adjournment of the court on Saturday evening, I have paid such attention to the case as I reasonably could, and such as will enable me to condense my remarks within the shortest possible space, in accordance with the arrangements mutually entered into. I feel as though an hour was, however, a very limited time to discuss the many questions that are intimately connected with the consideration of this important case. At the same time I feel perfectly satisfied that I can do more justice to it, with the opportunity afforded me by the delay that was kindly granted by the Court, than I could possibly have done when I was so unprepared for it. Gentlemen, the prisoner at the bar is charged with four offenses, or rather I may say there are four counts charged against him, three of which are for distinct offenses, one of which is charged in two different counts. Counsel for the State did not specify particularly the grounds upon which he did this. First, however, the defendant is charged with treason, and is so charged in nearly all the forms of treason required by law. In the second count he is charged with conspiring, and is thus indicted with certain other persons for conspiring to induce slaves to rebel and make insurrection. In the same count he is charged with aiding and advising slaves to rebel and make insurrection, etc. In the third count he is charged with murder—with willful and deliberate murder. In the fourth count he stands charged, with four other persons, three of whom are charged with murder, and the fifth with aiding and abetting, and that therefore they were all guilty of the crime of murder.

There is one crime preferred here against the prisoner to which I will briefly advert, in a manner personal to myself. I do not know, although I am a stranger, that it is necessary for me to say that I have no sympathy whatever with any man who could be guilty of such an offense as is charged here. I

would not say this but for the fact that I am an utter stranger here; and having made that remark, perhaps it may be proper for me to make one more. Allusion was made by witnesses to the state of the public feeling prevailing in the North upon this subject. A similar allusion was made by the Commonwealth's attorney in his remarks, which he submitted to you the other day. It is therefore not out of place for me to say, that so far as I know the state of the public sentiment in the North, and I think I know something of it, for my business and calling bring me into association with all classes of people—it is, therefore, I say, not inappropriate for me to say that there is no sentiment in the North in accordance with that of the defendant, or anybody else who may be guilty of the offenses charged in that indictment. There may be those, here and there, who feel that similar scenes to those which lately occurred, may from time to time be brought about; but whether the result of interference from abroad, or the spontaneous outgushing from within the Southern states themselves, it is a subject of deep regret that there should be any fear or danger of such things. And while they believe that such things may happen, they believe it with regret; and it is their anxious hope that these feelings which they deem to exist, may be removed peacefully and effectually.

But, gentlemen, I stand here to defend this man as I would any other man charged with offenses against this State, when called upon to do so. I ask you, gentlemen, to take the testimony in view of the law as given you by the Court, and to weigh it carefully and deliberately. I say to you, not in the language of the prosecuting attorney, to glide over it, but to investigate it clearly, and say whether the offenses charged against the prisoner have been committed by him or not, and whether they are sustained by the evidence. I feel considerable embarrassment in coming before a jury to defend a prisoner against charges of this kind under circumstances which are patent to you all. I know that you have been selected for the high duty as men competent to try the issue, and as men of sufficient integrity and honesty of purpose to rise above the prejudices, the passions and the feelings of every description

which surround you. But yet, you are in the midst of a community which, I am informed since I took part in this trial, is greatly excited; and even since I came into this court that fact has been brought to your mind.

The counsel for the prosecution told you, the other day, that anxious faces were hanging around the court house, invoking a verdict of condemnation upon the prisoner. His distinguished associate told you that not a lady in the county felt herself safe while things were in the condition they were now in. If this be so, then I say to you that the greater caution is required at your hands in giving this question a fair and impartial consideration. I was rejoiced to hear that the universal sentiments throughout the country is that the unfortunate man should have a fair trial. I was rejoiced to see that sentiment echoed throughout the whole State, through your Governor, that he should have a fair trial. I have no doubt that it is the firm intention of every member of the jury to give him a fair and impartial trial. But, gentlemen, what is meant by a fair trial? It is not that the mere forms of law should be invoked, because that is well known, no matter what the evidence may be—because, I say, it is well known that these forms are but the pathway to the scaffold. I do not mean that the mere forms of a fair trial should be observed. Why? Because they may be used merely to conceal, for the time being, the gallows that looms behind. I do mean that he shall have not only the forms of a fair trial, but that every principle of law and justice shall be made available and every particle of evidence introduced by himself or by the State shall get its fair weight and consideration in his behalf.

[A man charged with the grave offenses alleged against the prisoner, must be convicted only by the clearest and the most satisfactory and conclusive evidence, such as cannot leave a reasonable doubt on the mind of any one juror. I propose, therefore, gentlemen, briefly to consider the evidence as it applies to the law, which I hold should be applicable in this case. In doing so, I cannot go into details, but can advert only to the evidence generally, asking you, when you retire

to your room, to inquire whether this, that, or the other circumstance has been proved, which is essential to convict the prisoner. My first remark has relation to all the offenses charged in the indictment; and it is set forth upon the record that all those offenses were committed within the jurisdiction of this Court, and within the County of Jefferson, in this State. Now, gentlemen, this is a matter to be proven. I have read the notes of the evidence, and I can find no proofs whatever upon this point. There have been proofs that the offenses said to have been committed took place at Harper's Ferry, or in the neighborhood of Harper's Ferry. But where is Harper's Ferry? The Court takes judicial notice of something which it says occurred in a certain place within its jurisdiction. But this must be proved, and I maintain it has not been proved.]

Therefore I say, that the jury impanelled to try the matter set forth in this indictment must have every fact submitted to them proved beyond a doubt. They cannot take, and ought not to take, anything on trust. They know nothing, except that which is detailed in evidence. Not that every fact essential must be proved, but those facts must be proved from which inferences may legitimately be drawn. I say, therefore, gentlemen, you have no right, from any knowledge you may have obtained elsewhere, to say that these offenses, as alleged, have been committed within the limits of the county of Jefferson; and I ask that the Court will so direct you. In my State, the form is to ask the Court to charge the jury; here, I believe, the requisition is to instruct the jury. We demand, on behalf of the prisoner, that the jurisdiction be proven. We maintain that it is as necessary to do so, as to prove the firing of a gun, the seizing of a slave, or the commission of any of the acts laid in the indictment. If any of the offenses are committed elsewhere than within the jurisdiction of this Court, then the charges set forth have no existence, upon which this prisoner is sought to be convicted. Therefore, I say again, that this assumed jurisdiction must be proven. Having stated this much, I will proceed to other points.

[The first offense charged is treason.] Here I again raise a point without designing to argue it. I state it that it may be

understood that both myself and the learned counsel with whom I am associated agree entirely in our views upon that point, leaving it to be discussed at length by him. I allude to it now merely to afford the learned counsel who will close the arguments for the State ample time to reflect upon and consider it. The charge laid in the first count is treason.

[Now, my point is that no man is guilty of treason, unless he be a citizen of the State or Government against which the treason so alleged has been committed. I state the point, and I say to you, gentlemen, if the Court rules, as we claim it is bound to do, that this man is not a citizen, that consequently he cannot be guilty of treason against the State. Rebellion means the throwing off allegiance to some constituted authority. But we maintain that this prisoner was not bound by any allegiance to this State, and could not, therefore, be guilty of rebellion against it. But I will pass from this part of the subject. Now, with regard to treason, several things are said to constitute treason, one of which is levying war against the State; and that is one of the charges laid in the indictment. But, gentlemen, there is a great difference between levying war and resisting authority; and this is a matter I particularly wish you to bear in mind. A man may resist authority with ever so much violence, and bloodshed may ensue from such resistance, but that is not treason. It may happen, and it does happen, where men congregate together for the purpose of perpetrating a crime. They associate for that purpose, and they have their rules and regulations, and all the elements of an organization, and yet if assailed in the commission of crime and they defend themselves to the utmost and with great sacrifice to the lives of themselves and their fellow-citizens whom they resist, that is resistance, but that is not levying war. And how is it here? These men, it appears, assembled at a certain place, as the defendant himself indeed admits they did, and from that admission he does not shrink, for the purpose of running away with slaves. That is a crime, and for that crime he is amenable to the laws of your State, and for which you can punish him to the extent of that law.

The facts, then, are these: For the purpose of carrying out his illegal design—the carrying away of slaves from the State—he takes temporary possession of the arsenal and public buildings at Harper's Ferry, and while there attempts were made by the citizens, for which I do not blame them, to attack them and drive them off. It was then, and in resisting these attempts on the part of the citizens, that this man and those associated with him had recourse to arms, and in the conflict which ensued, blood was shed and lives were taken. But that is not levying war against the Commonwealth of Virginia, although it was resisting with arms that which was claimed to be the lawful authority of Virginia, seeking to arrest these men assembled in violation of law. But such things have happened frequently. You have heard of the jails of the country being broken open by armed bands, and persons confined therein, under the shelter and protection of the law, dragged from them and executed in defiance of the law. There have been instances where men acquitted by a jury of the country of the crime alleged against them, have been thus executed, the jail broken open and the authority of the Sheriff trampled under foot; but this was not levying war.

Resisting with arms the constituted authority of the State is not levying war, although murder may arise out of it, though not at first contemplated. In violent acts of this kind death may ensue in commission of the crime, even when bloodshed was not necessarily contemplated by the offenders. In many States of the Union we have, as well as here, cases of kidnaping, and we have instances of resistance to the authority of the law seeking to arrest the person charged, and bloodshed has ensued; but this is not levying war—it is simply resisting the authority of the law.

Now let us inquire whether the offenses charged in this indictment are a levying of war, or simply resisting with a high hand the constituted authorities of the land. It is said that there was an organized government, and that charge is sought to be sustained by evidence, particularly by a pamphlet that has been produced, and which was taken from the person of the prisoner. But, gentlemen, it would not necessarily fol-

low that overthrowing the Commonwealth of Virginia was contemplated by anything which appears in that pamphlet. How many harmless organizations have existed in the world at various times, surrounded with all the outside forms and machinery of government aye, even as harmless things as debating societies have been so organized, congresses created, resolutions and laws discussed, and any one reading the bulletins and reports issued from time to time from these associations would say, why here is a miniature government within the very limits of our State. No matter what name they may take, no matter under what form of organization they are bound together, no matter what offices they may create, it is not a proof of crime against the State.

These men named in the indictment have been characterized by the attorney as a marauding, thieving, murderous clan; and surely it is not such people that could subvert a government and raise another upon its ruins. Such associations as I allude to, have their laws and regulations, and even they prescribe death for violation of their laws. But that does not contemplate the overthrow of any existing legitimate government, but only an association for governing, controlling and directing themselves in their dealings with one another, but having no purpose or idea whatever of overthrowing, usurping or destroying the legitimate government. But I will remark further, with reference to this matter, that you cannot find this man guilty of treason except you have it proven incontestably before you that he was associated with others for the purpose and with the object of overthrowing and of organizing a government, and to subvert the Commonwealth of Virginia.

Now, I say with reference to that book so much relied upon by the prosecution, that if it proves anything it proves that the attempt, if any such was designed, was to establish a government in opposition to the Government of the United States, and not subvert the Commonwealth of Virginia. All the terms used, all the officers to be appointed, have reference to a government like the United States. The pamphlet does not say what territory this association, or government, is to

exercise jurisdiction over. Its proposed empire is not defined. It has fixed no territorial limits, and, therefore, if it means anything at all, it alludes to the government of the whole United States in general, and not to this State, or any other in particular. But as this book or code of laws has been put in evidence, I tell you, gentlemen, that you must not select any particular part of it—you must take it all as evidence, every part of it must be taken, one part as much as another, except the prosecution produce evidence satisfactorily contradicting any portion of it. From the contents of that book it is clear that these men did not contemplate the overthrow of the State Government, but simply an amendment or repeal of obnoxious laws, or what they deemed to be such. I speak of this matter because you are compelled to find that the prisoner was guilty of all those matters contained in the several counts. But they have failed in establishing any one of these charges. 1

The prosecution say that he is guilty of giving aid and comfort to the enemies of the Commonwealth, and that is the only specific charge they have made on fact. And how do they attempt to support it? Did not the prisoner, they say, actually send to the tavern and procure provisions and feed the enemies of the Commonwealth? Did he not feed the slaves, and are they not enemies of the State? Was not that act, therefore, furnishing aid and comfort to the enemy? I was surprised to hear this part of the subject commented upon. I was surprised that in that connection, by an association of ideas no doubt very ingenious and felicitous if they could be traced out, he burst forth into that sublime apostrophe to freedom which the prosecuting attorney delivered the other evening in tones and actions and language of such surpassing eloquence that none who heard him might be told that he had received his inspiration in the State which urns the ashes of Patrick Henry. And when I remember the cause we are here trying, and the circumstances which surround it, I remember also the appeal that that gentleman made to you, presenting a daguerreotype to your view of the anxious faces which hung around the court, invoking a verdict on the prisoner. But

that style of appeal was not confined to the prosecuting attorney alone. His distinguished associate, gentlemen, presented to you a touching picture of dishevelled tresses of frightened beauty, enough to excite the feelings and shatter the nerves of any one. I can but rejoice, gentlemen, that his stirring tones were not echoed from hill top to hill top, from mountain to mountain, to excite and spread alarm from one end of the State to the other; but that, on the contrary, they died away within these walls.

Gentlemen of the jury, the prisoner is charged with having given aid and comfort to the enemies of the State, and in despair, they are driven to rely upon this charge, for it is the only one specifically made. But I will leave this part of the case, and proceed. [The prisoner is charged with conspiring with slaves to rebel and make insurrection: Here, again, we are bound to make the same distinction in regard to treason. There is a manifest distinction between the effort made to run away with slaves, or inducing them to run away, and an attempt to excite them to rebellion and insurrection. Now, what is meant by insurrection and rebellion? It means a rising up of slaves against the authority of their masters—not a running away, although freedom may be the ultimate object. But it means a rising up against the masters, against the whites, against the State. Insurrection contemplates riot, robbery, murder, arson, and all the crimes which follow insurrection, more especially a servile insurrection. Now, what are the facts of the case? I cannot discuss them; but I will ask you, as men disposed to do justice to the State, to sit down and inquire among yourselves if any one witness has testified of aught showing that Brown or his associates said or did anything to any one slave to induce him to rise in rebellion?

What was it that was really done in this matter? Slaves were taken possession of, and for a temporary purpose placed in the arsenal or some of the public buildings at Harper's Ferry. But what was the evidence of Col. Washington himself who testified more on this subject than any other person? He says that not a slave seemed to have a heart in the matter. The slaves themselves did nothing. They were taken

there, and there they quietly remained. The only slave that lifted his hand was old Phil, Mr. Allstadt's servant, who, according to my recollection, and at the suggestion of Brown, the prisoner, drilled some portholes in the wall. And let me here remark, that the law as regards rebellion is the same as regards treason. A man may be engaged in an illegal act; any body of men, any body of slaves may be so engaged, and they may resist the lawful authorities sent against them, even to the shedding of blood, and yet it is not rebellion nor treason. Let us suppose that a body of slaves are seeking to escape; they are aided in that attempt by a body of white men; their escape may be effected by white men—they are pursued by the authorities of the State, their capture is attempted—they resist, and defend themselves even to the loss of life; yet that does not constitute rebellion—they are amenable to punishment, but not to the penalty of rebellion. This is all I need to say upon this subject.

The next crime charged against the prisoner is murder. Now, there are nine specifications of murder in the first degree. Five of these come under the head of murder in the first degree as premeditated murder, which is punishable with death; four others, where death happens without it being the original intention of the party to commit murder, but which, however, come under the head of first degree, if the party was at the time in the commission of some other offense—such as rape, arson, robbery or burglary. If a party is engaged in the commission of any of these crimes, and death, though not designed, ensues, then the offender is liable to the penalty of death. Now, as regards the death of the citizens at Harper's Ferry, when they took place, the prisoner and his men were not engaged in the commission of any of these offenses—such as arson, rape, robbery or burglary. If they were there in resistance to the authority of the laws of Virginia—if, while resisting that authority these deaths ensued, was there that premeditated malice aforethought which the law requires to make a man guilty of murder? There was one death ensued in the early part of the first night at Harper's Ferry, but how it happened no one knows—whether by accident or not. Nor

can it be known, whether he was accidentally shot by one of Brown's party or by one of the citizens themselves. The night was dark, and his death might have been accidental or otherwise; but now none can tell. I can only say as my client says to me on this subject: "Why should we shoot a negro?—that was not our object." And so I say.]

[Gentlemen, you cannot believe for one moment—you do not believe; the evidence will not allow you to believe; the law will not allow you to believe—that there was any malice or deliberate intention to shoot that negro, if he was shot by Brown's party at all; and, therefore, gentlemen, I shall pass that charge by without further comment.] Should I be asked why this man should not be brought within the jurisdiction of the Commonwealth of Virginia so as to punish him—was he to go acquit by justice for his offenses?—my answer would at once be: No, gentlemen, not for one moment. All I ask of you is that he be charged and convicted according to your own laws. This Commonwealth of Virginia has made laws to protect her citizens—has made laws which hedge them round and protect them on every side. She has within the borders of her population made such laws as she deems all-sufficient for the protection of that species of property which some, perhaps, would wish to deprive her citizens of. But whatever may be done hereafter; whatever may be considered necessary for the protection of life and property in time to come, it is the boast of our institutions that no man can be punished beyond what the law allows. If the punishment is not severe enough; if it is not ample enough, broad enough, will the law rest until it is properly remedied? The law can be made and altered from time to time, so as to meet every emergency of the State. If, then, your rights, your interests, your property, your lives are not sufficiently protected, there is a power in this grand old Commonwealth sufficient to protect them at all times. We, however, have no *ex post facto* law. We punish no man but by virtue of the law as it exists at the time the alleged offense was committed.] The prisoner at the bar is amenable to your laws. None can deny that. Frame your indictment against him today, charging him with en-

licing away your slaves, with interfering with that species of property, and his confessions are as thick as the leaves upon your forest trees that he was among you for that purpose. Frame your indictment, and the moment it is read he will plead guilty to it and submit to the penalty of his crime without a murmur. But contemplating nothing more, dreaming of nothing more, he asks that the ægis of your laws may be thrown around him; not that he flinches from his fate, whatever that may be, but that he may not be stigmatized with guilt of crimes which he never contemplated, and which he believes in his heart he never committed. Of course, as the law has been violated it must be vindicated—that I understand, and so does he. It is not true that public feeling and sentiment demand his immolation. It is not true that the public safety requires that he should be punished contrary to law. I speak thus in vindication of your own laws. I desire to preserve them unsullied and unstained, and that they be not perverted or distorted to suit this case, and to do a wrong instead of being applied to the punishment of what is wrong. I cannot shut my eyes to the fact that the statute and the law will not justify this man's conviction on the charges laid down in the indictment.

And why should this wrong be attempted? It is not true that there is any danger from the popular feeling. It is not true that there is danger to the State, either from within or without. Think of it, gentlemen, calmly and dispassionately. Here stands a man of whom you know something. He is a man of indomitable will, of sleepless energy of purpose, possessed of a spirit of perseverance that turns back from no difficulty, and endowed with a constitution that will endure and overcome everything. He, with all these qualities fitting him for such an enterprise, was engaged for months and months prosecuting it, and how did he succeed? Despite of all his efforts, despite those energies of mind and body which he threw into the work, and that unbending will of his which never faltered nor slept, he was able throughout the length and breadth of the United States to gather round his standard some twenty-one men, both black and white. Can it be

supposed, gentlemen, for a moment, that there is fear to be apprehended from such a man, who, in the zenith of his power, when he had a name in history, and when something might be hoped for the cause in which he was engaged, could only, throughout the whole country, raise twenty-one men?

Is it to be supposed for a moment, I ask, now, when he is struck down to the earth, his few followers scattered or destroyed—now, when the fact is known that the South is alarmed and armed in every direction ready to repel any enterprise of this kind, that anything is to be feared? No, gentlemen, there is not the remotest danger of your ever again witnessing in your State anything akin to that which lately occurred. I do not know whether it is necessary for me to make these remarks. I know it is the duty of the jury to be blind to everything that bears not upon the case. Justice is represented as blind, seeing nothing, but dealing only with the facts which relate to the case. I believe you will take this case and deal with it fairly, and dispose of it under the ruling of the Court. We heard during the progress of this investigation, reference made to the conduct of some parties who took an active part in the late events at Harper's Ferry. But, gentlemen, the courage spoken of was physical courage, that courage which would induce men, whenever necessary, to face danger, no matter from what quarter it might come or in whatever form it might present itself. This courage commends itself to your highest regard. This is physical courage.

But there is another sort of courage which soars far above that which is mere physical. It is moral courage. It is a courage which will enable the true man, who is blessed with it, to raise himself above the influence of prejudice, self-interest, or popular excitement. It is a courage that withstands all temptations, and fearlessly rises above the petty considerations which influence more ignoble minds. It stands unflinchingly to meet the seething waves of popular excitement, of commotion, and will not be turned aside from that which is humane and truthful. Now, gentlemen, if there be anything of this kind in your hearts—if you suppose there is

anything more required than simple justice to be meted out to this unfortunate man—you have this day an opportunity of exhibiting that true moral courage of which I have spoken; and through the longest day you have to live you will value nothing more precious than the remembrance of the fact that you acted rightly, and justly, and mercifully in the day of danger.

You, gentlemen, have this day a great opportunity of evincing true moral courage by dealing with this case as I have feebly pointed out, if you can do so justly, and preserving your oaths intact. Whatever you do, preserve your honor untarnished; preserve also the integrity and reputation of the Commonwealth, so long renowned for her justice, for truth and for chivalry unstained. I feel, gentlemen, that I have not done justice to the case; but I have said what I desired to say, situated as I am, closing simply with these remarks, which I make on behalf of my client, and at his request, that he has not a particle of exception to take to the testimony of the witnesses examined during the trial. He deems it only a wonder amid the excitement of these scenes, that the truth, as he declares it to be, should be so fully developed. He believed that the desire of one and all of the witnesses was to do him ample justice; that whenever they could speak in commendation of his (Brown's) humanity, in the means he had taken to spare the effusion of blood, and to preserve from harm his prisoners, they came cheerfully forward to do it. He desires also, as the least he can do, to express his grateful thanks to Captain Simms, who voluntarily came forward from another State, because, as he said, he wished to see justice done to a brave old man. Gentlemen, with these remarks I submit the case, as far as I am concerned, into your hands.

Mr. Chilton spoke of the embarrassment with which he undertook the case. He intended to do his duty faithfully, and had come to deal with the prisoner not as Captain Brown, leader of this foray, but simply as a prisoner under the charge of violating the law. If that law did not warrant a conviction, he should endeavor to make that appear to the jury. Still, he would say that he had no sympathy with the prisoner.

His birth and residence, until within a few years, had been in Virginia, in connection with the institution of slavery. Although now a resident of the District of Columbia, he had returned to his native State to spend the remainder of his days, and mingle his dust with her soil. No other motive operated on him than a disinterested one to do his duty faithfully. He regretted the excitement respecting the case, but was glad to hear the judge say on Saturday that he desired to try this case precisely like others. He desired, and the whole State, and the whole South desired, that the trial should be fair, and it had been fair. Circumstances had interrupted its progress.

Counsel were here without proper preparation, but indulgence had been granted, and they made no complaint. They should do the best they could under the circumstances, and could not complain of the excitement. It was natural. He hoped it would not interfere with the course of justice, or cast a stain upon the bar of the State. The jury had sworn they were unbiased, and he presumed they would firmly discharge their oaths in bringing in a verdict. He could not understand, from the opening of the prosecution, on what grounds these charges against the prisoner were attempted to be sustained. The Commonwealth attorney indulged in a strain of abuse of the prisoner, and pronounced sentence on him without waiting the verdict of the jury, thus usurping the place of the judge. There were three distinct charges. The first was of treason. This was an offense at common law. The word is derived from a French word, signifying betrayal. Treason means betrayal of trust or confidence, the violation of fidelity or allegiance to the Commonwealth. He maintained that treason could not be committed against a Commonwealth except by a citizen thereof.

In the present case, the whole proof shows that this prisoner is not a citizen of Virginia, and he therefore cannot be found guilty of treason. The indictment charges the prisoners with committing every act composing treason. They are charged with levying war against the State, and exciting slaves to insurrection; but there was no proof that they com-

mitted these acts charged—no proof that they resisted any process issued against them as violators of authority of the Commonwealth. They were rather guilty of resisting Colonel Lee, which was resistance to the Federal Government, and not to the Commonwealth. He had read carefully the prepared Provisional Constitution, and regarded it as ridiculous nonsense—a wild, chimerical production. It could only be produced by men of unsound minds. It defines no territory over which it is intended to operate, and says that we, that is the signers of the document, not all citizens of the United States, do establish the following Provisional Government. What is it? It is an association or co-partnership; they are to own property in common and regulate its tenures; it did not contemplate a Government, but merely a voluntary association to abolish slavery; did not even undertake to levy taxes, which is essential to any Government. It does not appear that this association was to be established in Virginia, or where it was to go into effect. This was not treason. Is it the adoption of a Constitution or establishment of a Government? By no means. Those parties had a mere imaginary Government to govern themselves, and nobody else, just like governing a military company or a debating society. Even if they intended to set up a government over the other, they did not do it.

There was a principle that every piece of evidence was to be construed most favorably to the accused, who should have the benefit of every doubt. In considering the evidence they must consider the whole of it—they must take the declarations of the prisoner in his own favor as well as against himself. Now look at the 45th Article of this Provisional Constitution, which expressly declares that the foregoing articles shall not be construed to encourage the overthrow of any State Government or General Government, and lead to a dissolution of the Union, but simply as amendment and repeal. This was on evidence before the jury, being submitted by the prosecution. Again, the prisoner is charged with conspiring with slaves to make an insurrection. No proofs show that the slaves entered into a conspiracy, and unless that was the case

there was no conspiracy. One party cannot conspire alone. Each charge is to be considered alone by the jury. If they believe the evidence, it does not warrant the conviction of treason, and they must consider the charge of conspiracy just as if no charge of treason had been made.

One count in the indictment was not to be brought in to aid another. He considered the prisoner had a right to be tried on one charge at a time, and entirely disconnected with any other. The Court had, however, overruled the motion on Saturday, and hence the importance of making this point clear to the jury, so that they might not confuse the various offenses, and the evidence relating to each. Next as to murder. It was a very singular way of making an indictment. Five prisoners are charged with the murder of four men. That they might have jointly done it he could understand; but that they could severally have done it, he declared it was almost impossible for the prisoner to make a defense against such a charge. It was too loose and vague. By the laws of Virginia there was but one specific murder punishable as capital, and that was deliberate, premeditated murder. The prosecution charged the prisoner with murder in the first degree, but he argued that the evidence in this case did not sustain the charge. The prisoner's conduct in the engine house showed no malice, according to the testimony of Col. Washington and Mr. Allstadt.

However ridiculous his project, which it would seem could never have entered the mind of a sane man, he might still have believed he could carry out that project without bloodshed. At any rate, no sane man could suppose he expected, with a mere handful of men, to accomplish his object by force, and it is but fair to take his declarations, especially when compared with his acts, that he intended to shed no blood, except in self-defense, unless you should believe, beyond the slightest doubt, that those declarations were untrue, and that the prisoner was actuated by malice in taking the lives of those who never did him harm, and against whom no cause for malice existed. As to Hayward, there was no proof as to how he met his death, or who killed him, or for what cause;

and as his colleague had remarked, the prisoner had no motive to kill negroes. The subsequent contest resulted in the loss of life, but the prisoner endeavored to avoid that conflict for the purpose of saving life, and therefore could not have been actuated by malice, which is necessary to constitute murder in the first degree.

Even if the prisoner were guilty of murder in the second degree, or manslaughter, yet neither was a capital crime, and not the crime charged in the indictment. He did not know but that Brown was justified in returning the fire when fired upon under the circumstances. It was a sort of self-defense, and very probably, had a little more time been allowed, these men could have been taken into custody without loss of life. He charged the jury to look on this case, as far as the law would allow, with an eye favorable to the prisoner; and when their verdict should be returned, he trusted that every man in the community would acquiesce in it. Unless the majesty of the law were supported, dissolution of the Union must soon ensue, with all the evils which much necessarily follow in its train.

Mr. Hunter said he proposed to argue this case precisely like any other. He had hoped the counsel for the defense would have omitted to interpolate any outside matters, and, to a great extent, he had been gratified. One remark he would allude to in the opening speech of the defense this morning, where he had been represented as having drawn the picture of the disheveled locks of an alarmed beauty. His friend had done him some injustice, in attributing to him a design of exciting alarm, or disturbing the minds of the people unnecessarily. He had endeavored to march straight forward, with the sole purpose of discharging his duty, in procuring the attainment of justice in respect to the prisoners. He would commend to Mr. Griswold the testimony he had borne at the opening of the Court, that not only have the forms of a fair trial been extended to the prisoner, but the substance also; that, in the midst of all temptations to the contrary, in the midst of all the solid reasons that have been urged by a different course—I do not mean an irregular course

—a different legal and constitutional course by the Governor of Virginia, might have been pursued by declaring martial law and administering drumhead justice. That the Chief Magistrate has taken high conservative ground, we, as Virginians, are justly proud of, and that we did not force this thing beyond what prudence requires of us, and that in regard to the power and patriotism of the Commonwealth of Virginia we are sufficient for it, come when it may, and in whatever form.

Now as to the objections as to the power of this Court to try a case where the offense was committed. It was hardly necessary to show that it was within the county of Jefferson, and within the jurisdiction of this Court. There was a law in Virginia making the Potomac River the boundary between Maryland and Virginia, and giving either State power, by a solemn compact, to execute a criminal process to the further bank. These matters, which are contained in the Code of Virginia, it was unnecessary to prove by witnesses. The jury could read the Code for themselves. Another law defined the limits of Jefferson County, showing that it embraced the locality where these events occurred, and giving jurisdiction to this Court. It was hinted in a preliminary stage of the proceedings, and an attempt was made to argue, that the United States held an exclusive jurisdiction over the armory grounds, but no stress was now laid on that point, because not one murder out of the four lives taken was committed on the armory grounds.

Mr. Hunter took up the argument of treason, which he understood to be that none but an *attaché* of the Commonwealth can commit treason against it. It is limited to no parties—it does not require that the offender should be a citizen according to our system of government, and the complicated machinery of Federal and State governments, under which we live. In some respects, we are unfortunately bound to recognize as citizens of Virginia those who have proven themselves within our borders, as in this case, and without them, as in others, our deadliest enemies. The Constitution of the United States provides that citizens of each State shall be entitled to all the immunities of citizens of the several States.

Brown came here with the immunities given by the Constitution. He did not come divested of the responsibilities belonging to those immunities. Let the word treason mean breach of trust, and did he not betray that trust with which, as a citizen, he is invested when within our borders? By the Federal Constitution, he was a citizen when he was here, and did that bond of Union—which may ultimately prove a bad bond to us in the South—allow him to come into the bosom of the Commonwealth, with the deadly purpose of applying the torch to our buildings and shedding the blood of our citizens? Again, our Code defines who are citizens of Virginia, as all those white persons born in any other State of this Union who may become residents here. The evidence in this case shows, without a shadow of a question, that when this man came to Virginia and planted his feet on Harper's Ferry, he came there to reside and hold the place permanently. It is true that he occupied a farm four or five miles off, in Maryland, a short time since, but not for the legitimate purpose of establishing his domicile there. It was for the nefarious purpose of rallying forces into this Commonwealth, and establishing himself at Harper's Ferry as a starting point for a new Government. Whatever it was, whether tragical, or farcical and ridiculous, as his counsel has presented it, his conduct showed, if his declarations were insufficient, that it was not alone for the purpose of carrying off slaves that he came there. His Provisional Government was a real thing, and no debating society, as his counsel would have us believe, and in holding office under it, and exercising its functions, he was clearly guilty of treason. The 46th section has been referred to, as showing it was not treasonable, but he supposed that that meant that the new government was to be a union of separate States like the present, with the difference that all were to be free States. The whole document must be taken together. The property of slaveholders was to be confiscated all over the South, and any man found in arms was to be shot down. Their conduct at Harper's Ferry looked like insanity, but there was too much method in Brown's madness. His purposes were too well matured, and he and his party

declared there were thousands in the North ready to join them. While the jury are to take the whole declaration, the law books expressly declare they may reject, if they see good cause to do so, that which would extenuate the guilt of the prisoner. They are bound to consider it; that is all. As to conspiracy with the slaves to rebel, the law says the prisoners are equally guilty, whether insurrection is made or not. Advice may be given by actions as well as words. When you put pikes in the hands of slaves, and have their masters captive, that is advice to slaves to rebel, and punishable with death. The law does not require positive evidence, but only enough to remove every reasonable doubt as to the guilt of the party. Sometimes circumstantial evidence is the strongest kind, for witnesses may perjure themselves or be mistaken. The defense say we don't know who killed the negro Hayward; that Brown did not do it because there was no object, but that it was dark, and the supposition is that Hayward was killed by mistake. They say Brown shot no unarmed men, but Beckham was killed when unarmed, and, therefore, he thought the whole case had been proved by the mass of argument. With regard to malice, the law was, that if the party perpetrating a felony, undesignedly takes life, it is a conclusive proof of malice. If Brown was only intending to steal negroes, and in doing so took life, it was murder with malice pretense. So the law expressly lays down, that killing committed in resisting officers attempting to quell a riot, or arrest the perpetrator of a criminal offense, is murder in the first degree. Then what need of all this delay—the proof that Brown treated all his prisoners with lenity, and did not want to shed blood? Brown was not a madman, to shed blood when he knew the penalty for so doing was his own life. In the opening he had sense enough to know better than that, but he wanted the citizens of Virginia calmly to fold their arms and let him usurp the government, manumit our slaves, confiscate the property of slaveholders, and without drawing a trigger or shedding blood, permit him to take possession of the Commonwealth and make it another Hayti. Such an idea is too abhorrent to pursue. So, too, the idea that Brown shed blood only in

self-defense was too absurd to require argument. He glories in coming here to violate our laws, and says he had counted the cost, and knew what he was about, and was ready to abide the consequences. That proves malice. Thus, admitting everything charged, he knew his life was forfeited if he failed. Then, is not the case made out beyond all reasonable doubt, even beyond any unreasonable doubt indulged in by the wildest fanatic? We therefore ask his conviction, to vindicate the majesty of the law. While we have patiently borne delays, as well here as outside in the community, in preservation of the character of Virginia, that plumes itself on its moral character, as well as physical, and on its loyalty, and its devotion to truth and right, we ask you to discard everything else, and render your verdict as you are sworn to do. As the administrators of civil jurisdiction, we ask no more than it is your duty to do—no less. Justice is the center upon which the Deity sits. There is another column which represents its mercy. You have nothing to do with that. It stands firmly on the column of justice. Administer it according to your law—acquit the prisoner if you can—but if justice requires you by your verdict to take his life, stand by that column uprightly, but strongly, and let retributive justice, if he is guilty, send him before that Maker who will settle the question forever and ever.

Mr. Chilton asked the Court to instruct the jury, if they believed the prisoner was not a citizen of Virginia, but of another State, that they cannot convict on a count of treason.

The COURT declined, saying the Constitution did not give rights and immunities alone, but also imposed responsibilities.

Mr. Chilton asked another instruction, to the effect that the jury must be satisfied that the place where the offense was committed was within the boundaries of Jefferson county, which the COURT granted.

THE VERDICT AND SENTENCE.

At an intimation from the JUDGE, the *Jury* immediately withdrew to consider their verdict.

After an absence of three quarters of an hour (during which the Court took a recess) the *Jury* returned into court with a verdict.

The Clerk. Gentlemen of the Jury, what say you, is the prisoner at the bar, John Brown, guilty or not guilty?

The Foreman. Guilty.

The Clerk. Guilty of treason, and conspiring and advising with slaves and others to rebel, and murder in the first degree?

The Foreman. Yes.

John Brown said not a word, but as on every previous day, turned to adjust his pallet, and then composedly stretched himself upon it.]

Mr. Chilton moved in arrest of judgment, both on account of errors in the indictment and errors in the verdict. The objection in regard to the indictment has already been stated. The prisoner, he said, has been tried for an offense not appearing on the record of the Grand Jury—the verdict was not on each count separately, but was a general verdict on the whole indictment.

Counsel on both sides being too exhausted to go on, the COURT ordered the motion to stand over until the next day, and *John Brown* was removed to prison.

November 1.

The time of the Court today was taken up with the trial of Coppoc and the hearing of the motion in the Brown case, which was argued at length by counsel on both sides.

November 2.

The COURT gave its decision on the motion for an arrest of judgment, overruling the objections made. On the objection that treason cannot be committed against a State, it ruled that wherever allegiance is due, treason may be committed. Most of the States have passed laws against treason. The objections as to the form of the verdict rendered, the COURT also regarded as insufficient.

The Clerk asked John Brown whether he had anything to say why sentence should not be pronounced upon him.

John Brown. I have, may it please the Court, a few words to say. In the first place, I deny everything but what I have all along admitted, of a design on my part to free slaves. I intended certainly to have made a clean thing of that matter,

as I did last winter when I went into Missouri, and there took slaves without the snapping of a gun on either side, moving them through the country, and finally leaving them in Canada. I designed to have done the same thing again on a larger scale. That was all I intended to do. I never did intend murder or treason, or the destruction of property, or to excite or incite the slaves to rebellion, or to make insurrection. I have another objection, and that is that it is unjust that I should suffer such a penalty. Had I interfered in the manner, which I admit, and which I admit has been fairly proved—for I admire the truthfulness and candor of the greater portion of the witnesses who have testified in this case—had I so interfered in behalf of any of the rich, the powerful, the intelligent, the so-called great, or in behalf of any of their friends, either father, mother, brother, sister, wife, or children, or any of that class, and suffered and sacrificed what I have in this interference, it would have been all right, and every man in this court would have deemed it an act worthy of reward rather than punishment. This Court acknowledges, too, as I suppose, the validity of the law of God. I see a book kissed, which I suppose to be the Bible, or at least the New Testament, which teaches me that all things whatsoever I would that men should do to me, I should do even so to them. It teaches me further to remember them that are in bonds, as bound with them. I endeavored to act up to that instruction. I say I am yet too young to understand that God is any respecter of persons. I believe that to have interfered as I have done, as I have always freely admitted I have done in behalf of His despised poor, is no wrong, but right. Now, if it is deemed necessary that I should forfeit my life for the furtherance of the ends of justice, and mingle my blood further with the blood of my children and with the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments, I say let it be done.

Let me say one word further. I feel entirely satisfied with the treatment I have received on my trial. Considering all the circumstances, it has been more generous than I expected.

But I feel no consciousness of guilt. I have stated from the first what was my intention, and what was not. I never had any design against the liberty of any person, nor any disposition to commit treason or excite slaves to rebel or make any general insurrection. I never encouraged any man to do so, but always discouraged any idea of that kind. Let me say also in regard to the statements made by some of those who were connected with me, I fear it has been stated by some of them that I have induced them to join me; but the contrary is true. I do not say this to injure them, but as regretting their weakness. Not one but joined of his own accord, and the greater part at their own expense. A number of them I never saw, and never had a word of conversation with till the day they came to me. and that was for the purpose I have stated. Now, I am done.

JUDGE PARKER, after a few primary remarks, said that no reasonable doubt could exist of the guilt of the prisoner, and sentenced him to be hanged in public, on Friday, the 2nd of December next.

An appeal was made to the Supreme Court of Appeals of Virginia for a writ of error, and was argued before that tribunal by Mr. Chilton and Mr. William Green, a leading members of the Richmond bar. The Court of Appeals, after consideration, unanimously refused the writ, holding that the proceedings in the Circuit Court were plainly right.

After the sentence was pronounced, a great many letters were received by Governor Wise of Virginia, urging him to pardon Brown or commute the punishment. Some of these were written in a spirit of menace, threatening his life and the lives of the members of his family. Others told him that the principal towns of Virginia would be burned down as a reprisal. Others appealed to his clemency, to his magnanimity and to his hopes of political promotion. Another class asked his clemency on the ground of public policy and to one of these writers, Mayor Fernando Wood of New York City, the Governor made the following reply:

Richmond, Va., Nov. 4, 1859.

My dear Sir: I have duly received and weighed every word of your letter. I give it all credit for good motive and good morals, and as suggesting what perhaps is good policy. Now, listen to me, for my mind is inflexibly made up.

Had I reached Harper's Ferry before these men were captured (and I would have reached there in time, had I been forwarded as I ought to have been from Washington and the relay house), I would have proclaimed martial law, have stormed them in the quickest possible time, have given them no quarter, and if any had survived, I would have tried and executed them under sentence of court martial. But I was too late. The prisoners were captives, and I then determined to protect them to the uttermost of my power, and I did protect them with my own person. I escorted them to prison and placed around them such a force as to overawe lynch-law. Every comfort was given them by my orders. And they have been scrupulously afforded a fair and speedy trial with every opportunity of defense for crimes which were openly perpetrated before the eyes of hundreds and as openly confessed. They could escape conviction only by technical exceptions, and the chances for these they had to a greater degree by the expedition of the prosecution. And the crimes deliberately done by them are of the deepest and darkest kind which can be committed against our people. Brown, the chief leader, has been legally and fairly tried and convicted, and admits the humanity of his treatment as a prisoner, the truth of the indictment and the truthfulness of the witnesses against him. He has been allowed excess of counsel, and the freedom of speech beyond any prisoner known to me in our trials. It was impossible not to convict him. He is sentenced to be hung—that is the sentence of a mild code humanely adjudged and requires no duty from me except to see that it be executed. I have to sign his death warrant. If the executive interposes at all, it is to pardon. And to pardon him I have received petitions, prayers, threats, from almost every free State in the Union. From honest patriotic men like yourself, many of them, I am warned that hanging will make him a martyr. Ah! Will it? Why? The obvious answer to that question shows me above anything the necessity for hanging him. You ask: "Have you nerve enough to send Brown to State prison for life instead of hanging him?" Yes, if I didn't think he ought to be hung and that I would be inexcusable for mitigating his punishment. I could do it without flinching, without a quiver of a muscle against a universal clamor for his life. But was it ever known before that it would be impolitic for a State to execute her laws against the highest crimes without bringing down upon herself the vengeance of a public sentiment outside of her limits and hostile to her laws? Is it so that it is wisely said to her that she had better spare a murderer, a robber, a traitor, because public sentiment elsewhere will glorify an insurrectionist with martyrdom? If so it is time to do execution

upon him and all like him. And I therefore say to you firmly that I have precisely nerve enough to let him be executed with the certainty of his condemnation. He shall be executed as the law sentences him, and his body shall be delivered over to surgeons and await the resurrection without a grave in our soil. I have shown him all the mercy which humanity can claim.

Yours truly,

Henry A. Wise.

Hon. Fernando Wood, New York.

December 2.

THE EXECUTION.

Today (Friday) at eleven o'clock, John Brown was brought out of the jail accompanied by Sheriff Campbell and his assistants, and Captain Avis, the jailer.

The prisoner was taken to the cell of Copeland and Green; he told them to stand up like men and not betray their friends; he then handed them each a silver coin, saying he had no more use for money, and bade them adieu. He then visited Cook and Coppoe, who were chained together, and remarked to Cook, "You have made false statements." Cook asked, "What do you mean?" Brown answered, "Why, by stating that I sent you to Harper's Ferry." Cook replied, "Did you not tell me in Pittsburg to come to Harper's Ferry and see if Forbes had made any disclosures?" Brown: "No, sir; you know I protested against your coming." Cook replied, "Capt. Brown, we remember differently," at the same time dropping his head. Brown then turned to Coppoe, and said "Coppoe, you also made false statements, but I am glad to hear you have contradicted them. Stand up like a man." He shook both by the hand, and they parted.

The prisoner was then taken to Stevens' cell and they interchanged greetings. Stevens said, "Good bye, Captain, I know you are going to a better land." Brown replied, "I know I am." Brown told him to bear up and not betray his friends.

He then told the Sheriff he was ready, his arms were pinned, and with a black slouch hat on, and the same clothes he wore during the trial, he proceeded to the door, calm and cheerful. As he came out the six companies of infantry and

one troop of horse, with General Taliaferro and his staff, were deploying in front of the jail, whilst an open wagon with a pine box, in which was an oak coffin, was waiting for him.

Brown looked around, and spoke to several persons he recognized, and, walking down the steps, took a seat in the wagon with Sheriff Campbell and the jailer, Avis. He looked with interest on the fine military display, but made no remarks. The wagon moved off, flanked by two files of riflemen in close order. On reaching the field, where the military were already in full possession, he got out of the wagon and ascended the scaffold with a firm step. He had no statement to make. He declined to accept the services of any clergymen, though they were offered. With as little delay as possible the rope which held the trap door on which he stood was cut, and John Brown's earthly career was ended.

THE TRIAL OF EDWIN COPPOC FOR TREASON, INSURRECTION AND MURDER, CHARLES- TOWN, VIRGINIA, 1859.

THE TRIAL.

The trial of Edwln Coppoc,¹ the only white man captured at the engine house with John Brown, was begun, after his was finished and was concluded on the day he received sentence. The evidence was largely the same as on the trial of the leader, except that two witnesses swore positively that it was Coppoc who shot and killed Mayor Beckham, the most respected and best loved of the victims of the raid. The jury quickly brought in a verdict of guilty.

THE TRIAL.²

In the Circuit Court of Jefferson County, Charlestown, Virginia, October, 1859.

HON. RICHARD PARKER,³ *Judge.*

¹ EDWIN COPPOC was a brother of Barclay, another of the raiders, who escaped. The father of the Coppocs died when Edwin was six, the latter having been born June 30, 1835. For nine years thereafter Edwin lived with John Butler, a farmer near Salem, Ohio, removing then with his mother to Springdale, Iowa. This place he left in the spring of 1858, to become a settler in Kansas. He took no part in the Territorial troubles, and returned to Springdale in the autumn of 1858, when he became acquainted with Brown. He always bore an excellent reputation as an honest, brave, straightforward, well-behaved man, and his death was particularly lamented by many friends. An exemplary prisoner, there were many Southerners who hoped for his pardon. He was buried first in Winona (later in Salem, Ohio), after a public funeral, attended by the entire town. In jail he regretted his situation, wrote his mother of his sorrow that he must die a dishonorable death, and explained that he had not understood what the full consequences of the raid would be. Villard, p. 682.

² *Bibliography.* See *ante*, p. 710.

³ See *ante*, p. 709.

October 31.

This afternoon, after the jury returned their verdict in the Brown case, a jury was immediately sworn for the trial of Edwin Coppoc.

Mr. Hunter and Mr. Harding, for the Commonwealth.

Mr. Green and Mr. Botts, for the prisoner.

A jury was sworn and the evidence was to a large extent a repetition of that on the Brown trial. It was proved that he was captured at the taking of the engine house, and two witnesses gave testimony distinctly identifying the prisoner as the slayer of Mayor Beckham.

John T. Allstadt.⁴ Was one of the prisoners in the engine house. Saw Mr. Beckham, for I was looking through one of the holes in the engine house, go behind the water tank and peer around the corner. Coppoc, who was seated in the doorway called out, If he keeps on peeking, I'm going to shoot. Mr. Beckham peeped around again and Coppoc fired. I was standing close to him and saw it all, and heard some of the captives behind me shout out, Don't fire, for God's sake, they'll shoot in here and kill us all. Coppoc's first shot missed and he fired again. This time Mr. Beckham fell. Coppoc did not fire again, for there was no one in sight. Think he would

not have fired but for Mr. Beckham's equivocal appearance. But a moment later Oliver Brown spied someone peeping over the stone wall of the trestle and sighting a gun. He instantly took aim, but in the very act of firing, the other shot struck him—a mortal wound that gave him horrible pain.

Joseph A. Brua. Was one of the prisoners in the engine house and was permitted to go out several times with a flag of truce; during the firing Coppoc fired twice, and at the second fire, Brown remarked, That man is down. I asked permission to go out, and found that Mr. Beckham had just been shot; have no doubt that Coppoc shot him.

⁴ See his testimony in the trial of Brown, p. 757.

⁶ The day following, being November 2, I went into court at the usual early hour with an opinion I had prepared the preceding night, in which I had at length stated the reasons for overruling the objections which Brown's counsel had made to judgment being rendered, intending to pronounce it so soon as the court was opened, but a jury for the trial of Coppoc (which had been commenced on the 31st of October) were in their seats, and as the same objections, or some of them, might be made in this case as had been presented in that of Brown, I refrained from reading the opinion. I did this because by the Virginia practice a jury in a criminal case were held to be judges of the law as well as triers of facts, and I would do nothing to preju-

November 2.⁶

Today, after addresses to the jury, a verdict of *Guilty* was returned against the prisoner on all the counts of the indictment.⁷

dice this their right. For this reason I did not overrule Brown's motion in arrest until late on this day, after a verdict was rendered in the case of Coppoe. Judge Parker's "Narrative," *ante*, p. 710.

⁷ For the indictment, see *ante*, p. 724.

THE TRIAL OF JOHN ANTHONY COPELAND AND SHIELDS GREEN FOR MURDER, CHARLESTOWN, VIRGINIA, 1859.

THE NARRATIVE.

The trials of the two negroes, Copeland¹ and Green,² followed the conviction of Edwin Coppoc. Mr. George Sennott, a Boston lawyer, and abolitionist, appeared for them and made a few technical objections, on one of which he succeeded, viz., that a negro could not be guilty of treason in Virginia. There was and could be no defense to the other counts of the indictment and both prisoners were promptly found guilty by the jury.

¹ JOHN ANTHONY COPELAND, a free colored man, was born at Raleigh, North Carolina, in 1834. His parents removed to Oberlin, Ohio, in 1842. He was for some time a student in the preparatory department of Oberlin College, and was enlisted for John Brown in September, 1859, by Lewis Sheridan Leary, his uncle, who was at that time also residing at Oberlin. He was one of the thirty-seven men concerned in the famous Oberlin rescue of a fugitive slave, John Price, for which he was for some time imprisoned at Cleveland. "Copeland," Judge Parker stated in his story of the trials (*St. Louis Globe-Democrat*, April 8, 1888), "was the prisoner who impressed me best. He was a free negro. He had been educated and there was a dignity about him that I could not help liking. He was always manly." Andrew Hunter at the same time was quoted as saying: "Copeland was the cleverest of all the prisoners . . . and behaved better than any of them. If I had had the power and could have concluded to pardon any man among them, he was the man I would have picked out." Villard, p. 684.

² SHIELDS GREEN, otherwise known as "Emperor," was born a slave. After the death of his wife, he escaped on a sailing vessel from Charleston, South Carolina, leaving a little son in slavery. He eventually found his way to Rochester, New York, three years after his escape and after a sojourn in Canada, he became acquainted with Frederick Douglass, and through him with John Brown, and here he lived as a servant and a clothes cleaner. He went with Douglass to Chambersburg to meet John Brown, and went on with Brown when Douglass turned back. Several reliable prisoners in the engine house

THE TRIAL.

In the Circuit Court of Jefferson County, Charlestown, Virginia, November, 1859.

HON. RICHARD PARKER, *Judge.*

November 4.

The negroes, Copeland, a free negro, and Green, a slave, were tried today. Several of the witnesses in the Brown trial repeated their testimony given there, and the following additional evidence was given:

Wm. Johnson. Arrested Copeland in the middle of the Shenandoah; he was attempting to escape across the river; he was armed with a spear and a rifle; he said he had been placed in charge of Hall's rifle factory by Capt. Brown.

Andrew Kennedy. Was at the jail when Copeland was brought in; questioned him; he said he had come from the Western Reserve of Ohio; that Brown came there in August and employed him at twenty dollars per month. Copeland said that their object was to liberate the slaves of this

country; that he knew of nineteen of the party, but there were several others he did not know.

Dr. Stidry testified to his saving of Copeland from the lynchers.³

Col. Washington. There was only one negro in the engine house of Brown's party—Shields Green. He was armed like the rest with a rifle and revolver and a butcher knife in his sheath. Saw him fire a good many times. He was rather impudent in the day time. I saw him order some gentlemen across the street to shut a window with a rifle raised

testified to Shields Green's cowardice during the fight. He endeavored to avoid arrest by palming himself off as one of the slaves impressed by Brown. O. P. Anderson, however, speaks of Green's bravery and declares that Green could have escaped with him, but that the former slave protested that he would go back "to de ole man," even if there was no chance of escape. Owen Brown had a poor opinion of Green's staunchness, after his experience in bringing him down from Chambersburgh to the Kennedy farm. Green's age is said to have been twenty-three years. He was a full blooded negro. Villard, p. 687.

But Green repented his joining the band and became terrified when the end drew near. When he reached the Kennedy farm after a hard journey in the mountains, "Oh, what a fool I am he said to one of Brown's sons. "I had got away out of slavery and here I have got back into the eagle's claw again." Villard, 414.

³ See *ante*, p. 742.

at them. He said, shut that window, damn you; shut it instantly. He did this in a very impudent manner. But when the attack was made on the engine house in the early morning, he

had thrown off his hat and all his equipments and was endeavoring to represent himself as one of the slaves. Shields Green was one of the men who took my carriage from my place.

Mr. Hunter introduced a confession made by *Copeland* to the marshal while in prison, as follows:

I am John Copeland of Oberlin, the same person that was indicted last year in Cleveland for rescuing the slave John. I was born in North Carolina, free, and went to Oberlin at ten. My parents reside there. John Brown, Jr., and T. H. Kagi, wrote letters to Leary at Oberlin which I saw and which induced me to come on this expedition. Ralph and Samuel Plumb gave me \$15 for expenses. I came through Cleveland the day after the October election. Persons there gave me money to join John Brown.

The confession ended with the following questions and answers: Have you any knowledge of an attempt to raise an insurrection in any other State or region of our country? I understand that there was an intention to attempt a movement of that kind in Kentucky about the same time. Did you know from Brown, or any other person, that help was expected from the slaves in the neighborhood? I did from Brown that help would come from the slaves, but I did not understand at any time, until Monday morning, after the fight had commenced, that any thing else than running off slaves was intended, I being at the Rifle Works, half a mile from the engine house. Did you learn from Brown, or any of the company, that persons at Harper's Ferry sympathized with them, or were in any way connected with the movement? From Brown I understood that there were laboring men at Harper's Ferry, who wished to get rid of the slaves, and would aid in running them off.

*Mr. George Sennott*⁴ appeared for both prisoners and after all the evidence in the Green case was in, asked the COURT to direct the jury not to pay any attention to any evidence

⁴ SENNOTT, GEORGE. Admitted to Massachusetts (Suffolk County) Bar, 1853. "George Sennott went to Virginia to defend some of John Brown's associates. A newspaper there said: 'We presume lager beer will accumulate in Boston while Sennott is here.' A man from there said to a clerk in our office: 'You have nominated a pretty man for Governor, a man who went to Virginia and drank all the whiskey there and was drunk every day.' 'Ain't you mistaken in the man,' asked the clerk. 'Isn't it Sennott?' 'O, yes,' said the man, 'I beg Mr. Andrew's pardon. There was some resemblance between the two.' This same autumn Sennott was making a speech at a Demo-

tending to prove treason, on the ground that a slave could not be guilty of treason, for he was not a citizen. The COURT agreed, and *Mr. Hunter* abandoned that count of the indictment.

Mr. Sennott moved for a verdict of not guilty on the first count in the case of Copeland on the ground that Copeland being described in that count as a negro, could not be guilty of treason, under the decision in the case of Dred Scott, that a negro was not a citizen. The COURT assenting, *Mr. Hunter* admitted the statement of law to be correct, and declared that he abandoned that count.

On the second count of the indictment, *Mr. Sennott* moved for a similar direction, on the ground that the negro was described as free, whereas the presumption of law in the slave States was that he was a slave, being a man of color; that in a civil case, he must show that fact affirmatively himself; that in a criminal case it was a material, issuable, and triable fact, and must be proved as laid, and that the Government had closed their case without doing so.

Mr. Hunter called attention to the fact that they had introduced Copeland's confession to the Marshal, wherein he stated that he was born in North Carolina, but went to Oberlin at the age of ten; and was born free.

Mr. Sennott replied that the confession was admitted under strong objection; that it had been made under influence, as well as threats; that no matter how admitted, it was a declaration of Copeland in his own favor, and should not therefore be admitted; that it was in his favor legally, because the status of a free man was legally superior to that of a slave; that he had a legal right to reject, or refuse to assume a legal benefit when it was a practical damage; and that, at any rate, for the purposes of this trial, he would insist that his client was a slave as well as a negro, and that the Government must prove that he was free affirmatively.

The COURT ruled that the burden of proof was on the Government, but refused to direct that they must prove it affirmatively.

Mr. Sennott asked the Court to direct a verdict of not guilty on the second count, for conspiring with slaves and others to rebel, and inducing slaves to insurrection—and asked the Court to rule that there was no evidence of such an offense to go to the jury. He also asked the Court to rule, that compelling slaves to take pikes in their hands was not advising them to revolt, in the sense of the law.

The COURT refused so to rule.

Mr. Sennott asked the Court to rule that, as the Government had

eratic meeting. A fellow in the crowd shouted, 'You're an Abolitionist, did not you go to Virginia to defend John Brown?' Sennott replied: 'Am I a thief because I defended you on a charge of larceny and kept you from the House of Correction where you belong.' " Willard (J. A.). "Half a Century With Judges and Lawyers."

relied all along upon the confession of Copeland, that he had come to run off slaves, and had insisted on it, they could not be allowed now to contradict their own story; and that that had actually proved a different offense entirely, to wit, slave stealing, from what the Grand Jury had charged them with under oath, viz., conspiracy and rebellion. The same remarks applied to the counts for murder.

Mr. Hunter remarked that the Government had proved a common purpose, that not all the ingenious pleading of the counsel could evade. That being so, he thought proof of the overt acts of conspiracy first proved that, and then the murders occurring in furtherance of the common design were chargeable upon all the conspirators.

Mr. Sennott said that the whole learned argument as to common purpose was entirely useless, because the law intended only to punish a man for committing crimes in pursuance of a common purpose with which he was charged. Here, however, he was shown to have done nothing—and nobody in his band—except in pursuance of a design with which he was not charged.

The COURT ruled that the Government must prove the second count as charged, and evidence of a conspiracy to run off slaves did not and would not support it.

The cases were then left to the *Jury*, which retired and returned into court in a short time with a verdict of *Guilty* against Green and Copeland on all the counts, except the first.

THE TRIAL OF JOHN E. COOK FOR TREASON, INSURRECTION AND MURDER. CHARLES- TOWN, VIRGINIA, 1859.

THE NARRATIVE.

The last of the raiders to be tried before Judge Parker was John E. Cook.¹ The proof was that to Cook was given the difficult and responsible task of going to Harper's Ferry more than a year before the raid to live as a spy in the country and to reconnoiter the vicinity and report to his chief. He arrived on June 5, 1858. He secured a position as lock-tender on the old canal across the Potomac from the town, and obtained much information of value, even after the conspirators had assembled at the Kennedy farm. He urged Brown to let him go among the plantation negroes and give them hints of what was coming, a suggestion which Brown refused with much wrath.² On the morning of the raid he was one

¹ JOHN E. COOK was born in 1830, in Haddam, Connecticut. He was of a well-to-do family and studied law in Brooklyn and New York. He went to Kansas in 1855. His movements from the time of his first meeting with Brown, just after the battle of Black Jack, in June, 1856, until after his capture are set forth in his "Confession" made while in jail. (See *post*, p. 825.) For this confession Cook was severely censured at the time by the friends of Brown; he was even called the "Judas" of the raid. But the document when examined today, obviously contains only facts which are of great historical value, and whose promulgation at the time in no wise injured the case of his fellow raiders. Had it not been made, the result of the trial would have been the same. Cook preceded John Brown to the Harper's Ferry neighborhood by more than a year, there sometimes teaching school, and again living as a lock tender, while in the registration of his marriage to Mary V. Kennedy, of Harper's Ferry, April 18, 1859, he was described as a book agent. He was captured eight miles from Chambersburg, Pennsylvania, October 25, 1859. He was a remarkably fine shot, and had seen much fighting in Kansas. He was reckless, impulsive, indiscreet, but genial, generous and brave. Villard, p. 680.

² "This," wrote Brown's daughter, "father positively forbade his doing. Father lived in constant fear that Cook would make a confi-

of the party who went to Colonel Washington's plantation, for he had visited here before and had been shown the sword which Frederick the Great had presented to George Washington, and afterwards was one of the guard at the school house, to which arms were being moved from the Kennedy farm, conversing freely with the schoolmaster, explaining the purposes of the attack and the views of the raiders. About four in the afternoon, hearing the firing, he scaled the mountain to get a view of what was going on and beheld his comrades cooped up in the engine house with the citizens firing on them. He fired some shots himself, one of which killed Mr. Turner, returned to the school house, where he rejoined the rear guard, Owen Brown and others, and calling at the farm for some provisions, they took to the mountains and escaped. But a large reward being offered by Virginia, he was captured in Pennsylvania and brought to Charlestown for trial.

The hearing began on November 7 and was concluded the next day. No great forensic efforts had marked the other trials; a notable one was reserved for the last. For there appeared as his counsel, brought to him by the brother-in-law of the prisoner, Governor Willard of Indiana,³ one of the great orators of the West, Daniel W. Voorhees, afterwards for many years a United States Senator from that State. He made a plea for his client which brought tears into the eyes of the jury, but in vain.⁴ Cook was convicted just as his com-

dant of some one who would betray us all the summer. He never doubted his bravery, his honesty or good intentions, but considered him very impulsive and indiscreet." Villard, p. 408.

³ WILLARD, ASHBEL P. Was born in Vernon, N. Y. and died in 1861 in Indiana. He was the tenth Governor of that State.

⁴ "At the same term Coppoc, Green and Copeland were tried and convicted, as also was John E. Cook. He had in the early morning of Monday, the 17th of October, been sent across the river with some of the captured slaves, and a wagon, taken from Mr. Washington, for the arms and ammunition which had been stored there, as before mentioned, and so he was not on that day present with Brown; but he aided his party by firing from the high ground opposite to Harper's Ferry, and the death of Mr. Geo. W. Turner, one of the most esteemed citizens of the county, who took no part in the fighting, was attributed

panions were, and on the 10th of November he and Coppoc, with the negroes Copeland and Green, were sentenced to be hanged on the 16th of that month, which penalty was duly carried out on the same field on which John Brown had yielded up his life.

THE TRIAL.⁵

In the Circuit Court of Jefferson County, Charlestown, Virginia, November, 1859.

HON. RICHARD PARKER,⁶ *Judge.*

November 7.

The trial of John E. Cook began today. Cook having escaped at the time of the raid, was not indicted with the other raiders, but on his capture and being brought into the jurisdiction, a similar indictment was returned by the Grand Jury as to him, to which he pleaded *Not Guilty*.

*Mr. Hunter*⁷ and *Mr. Harding*,⁸ for the Commonwealth.

Daniel W. Voorhees,⁹ for the prisoner.

to him. He then escaped, and had nearly reached the Pennsylvania line before he was arrested. His defense was conducted by the Hon. Daniel W. Voorhees in a grand and touching speech, which brought tears into the eyes of many of the jury, but the evidence was too convincing, and they felt bound here also to render a verdict of guilty of murder." Judge Parker's Recollections, *ante*, p. 710.

⁵ *Bibliography.* "Confession of John E. Cook, Brother-in-law of Gov. A. P. Willard of Indiana and one of the participants in the Harper's Ferry Invasion. Published for the Benefit of Samuel C. Young, a non-slaveholder who is permanently disabled by a wound received in defense of Southern Institutions. Copyrighted and Published by D. Smith Eichelberger, Editor of the Independent Democrat, Charlestown, Va., 1859." This is reprinted in full in "The Life, Trial and Execution." (De Witt), *ante*.

*"Addresses of Hon. Daniel W. Voorhees, of Indiana; comprising his argument delivered at Charlestown, Virginia, Nov. 8, 1859, upon the Trial of John E. Cook, for Treason and Murder; also An Address delivered before the Literary Societies of the University of Virginia, July 4, 1860. Richmond, Va. Published by West & Johnson. 1861."

⁶ *Ante*, p. 709.

⁷ *Ante*, p. 728.

⁸ *Ante*, p. 728.

⁹ VOORHEES, DANIEL WOLSEY. (1827-1897.) Born Liberty, Ohio.

The *Jury* having been selected and sworn:

Mr. Hunter asked that the proceedings be suspended to make a motion in the case of Stevens, who was brought into court supported by two officers. His face was badly wounded and was bound in bandages. He was placed on the floor, his head resting upon a chair.

Mr. Hunter announced that he had at that moment received a telegraphic dispatch from Governor Wise, referring to the case now progressing. The dispatch was as follows: "Let Cook be tried with you, and turn Stevens over to the United States." I have for some time been in communication with Governor Wise upon this subject, and it had partly been determined to give up Cook to the United States Court, but the Governor, as it appeared, has decided otherwise, and his decision, by great good fortune, was just as I would prefer to have it, certain discoveries having recently been made which proved that the purposes of the Government could be better carried out by the change. What we aim at is not only the destruction of these men whom we have in confinement; we now strike at higher and wickeder game.

Mr. Harding dissented from the views of his colleague. He thought the State should not give up a single one of the culprits.

The COURT said that if *Mr. Sennott*, who was to defend Stevens, consented to the arrangements, there would be no objection interposed by it.

*Mr. Sennott*¹⁰ after consultation with Stevens announced that he consented.¹¹

Graduated De Pauw University, 1849. Admitted to Bar, 1851. Member of Congress from Indiana, 1869-1873. United States Senator, 1877-1897. Cook was a brother-in-law of the then Governor of Indiana, who retained *Mr. Voorhees* and with his wife was present at the trial.

¹⁰ *Ante*, p. 811.

¹¹ Before Stevens, on account of his physical condition, could be removed from Charlestown, the arrangement fell through and his case was remanded to the Jefferson County Court. (See *post*, p. 862.) *Mr. Villard* in commenting on the change of view, says: "Yet in December the hunt for the greater game was abandoned. When on

THE EVIDENCE.

Much of the testimony was that given on the John Brown trial with these additions:

*Col. Washington.*¹² The raiders appeared at my chamber door about half-past one o'clock in the morning. My name was called in an undertone, and supposing it to be by some friend who had possibly arrived late, and being familiar with the house, had been admitted in the rear by the servants, I opened the door in my night shirt and slippers; was in bed and asleep. As I opened the door there were four armed men with their guns drawn upon me

just around me. Three had rifles and one had a large revolver. The man having a revolver held in his left hand a large flambeau, which was burning. The person in command turned out to be Stevens. He asked me my name, and then referred to Cook, who had been at my house before, to know whether I was Colonel Washington. On being told that I was, he said, "You are our prisoner," I looked around, and the only thing that astonished me

December 15 President Buchanan inquired by telegraph whether Stevens had been turned over to the United States, Andrew Hunter replied: 'Stevens has not been delivered to the authorities of the United States. Undetermined as yet whether he will be tried here.' On hearing of this query from the President, Governor Wise, on December 18th, exactly reversed his position of six weeks earlier, in this message to Andrew Hunter: 'In reply to yours of the 15th, I say definitely that Stevens ought not to be handed over to the Federal authorities for trial. . . . I hope you informed the President of the status of his case before the Court. I am convinced that there is a political design in trying now to have him tried before the Federal courts. He will not be delivered up with my consent.'

We have no means of knowing what the political conspiracy was which Governor Wise then thought he scented. But the chief reason for the change of policy in regard to Stevens' trial, was the appointment on December 14th of a committee of investigation of the United States Senate, consisting of three pro-slavery Senators and two from the North, headed by Senator Mason of Virginia. As this committee was avowedly appointed to strike at the 'higher and wickeder' villains, the special reason for having one trial in a United States Court—the examining of the Northern friends and backers of Brown and of the Republican leaders—had disappeared. Hunter and Wise found it easy to show that Stevens had not actually been turned over to the Federal authorities, though his trial in November in Judge Parker's court had been interrupted for that express purpose. Against this unjust and hurtful vacillation with Stevens, his counsel argued and protested in vain." Villard, p. 478.

¹² See *ante*, p. 749.

particularly, was the presence of Cook, who had been at my house some three or four weeks before that. I had met him first on the street at Harper's Ferry. He addressed me by name, and said, "I believe you have a great many interesting relics at your house, could I have permission to see them if I should walk out some day?" I said, "Yes." At that time I supposed he was an armorer engaged in the public works at Harper's Ferry almost all of whom know me, though I do not know them; but I am familiar with the faces of most of them; had not seen this man before, or I should have recognized him. He came out to my house about four weeks before this attack. While there he was looking at a pistol that General Lafayette had presented to General Washington about the period of the Revolution. He asked me if I had ever shot it. I told him I had. He asked, "Does it shoot well?" I told him I had not shot it for six or eight or ten years, that I had merely tried it, and cleaned it, and put it in the cabinet, and, I remarked, it would never be shot again. He was very curious about arms. He finally told me that he belonged to a Kansas hunting party, and found it very profitable to hunt buffaloes for their hides. He unbuttoned his coat and showed me two revolvers, and said, he was in the habit of carrying them in his occupation, that he had been attacked with chills and fevers some time ago, and was wearing them to accustom his hips to their weight. He asked if I was fond of shooting. I said I formerly was; and then he said: "You would possibly like to try these?"

We went in front of my house, and under a tree we stuck up a target, and fired some twenty-four shots. He then told me that he had a rifle, a twenty-two shooter, that he would like me to look at, as he saw I had some fondness for firearms. He said to me, "When you come down to the Ferry, if you will call, I should like you to see it and try it." Was at the Ferry, it so happened, ten or fifteen days from that period, and inquired for him. Happened to know his name in this way; he did not introduce himself when he came, but in taking up his large revolver (the size used in the army), I found "John E. Cook" engraved on the breech of it on a brass plate, and he said, "I engraved that myself; I borrowed the tools from a silversmith, a bungler, and thinking I could do it better myself, I did it." Then, said I, "I presume that is your name?" and he said "Yes." When I asked for him at the Ferry, they told me he had left, and I supposed, in all probability, he had gone to Kansas, as he told me he intended to go in a few days. Believing that he had gone to Kansas, I was surprised to find him among the raiders in my home. The time he asked permission to come to my house and see my relics, I showed him the sword presented by Frederick the Great to General Washington, which he used as his dress sword, as well as one of the pistols presented to him by Lafayette. They descended to my father, and from him to me. My grandfather had the first choice of five swords left by the general.

After looking around I observed that each man had two re-

volvers sticking in his belt in front besides the rifle. I remarked to them, "You are a very bold looking set of fellows, but I should doubt your courage; you have too many arms to take one man." I said to one of them, "I believe with a pop-gun I could take either of you in my shirt tail." At that time the fire began falling from the flambeau, and I asked them to come in my room and light my candles, so as to prevent my house from being burnt. After going in, and while dressing myself, I said, "Possibly you will have the courtesy to tell me what this means; it is really a myth to me." Stevens spoke up and said, "We have come here for the purpose of liberating all the slaves of the South, and we are able (or prepared) to do it," or words to that effect. I went on deliberately and dressed myself, and went into the dining room, thinking that possibly there was a better fire there; the fire in my chamber had gone out. When I got in Stevens said to me, "You have some firearms, have you not?" I replied, "Yes, but all unloaded." He said, "I want them," and Cook made a signal to him that he had seen a very handsome gun in my closet. It was a gun which I had imported from England, and thinking he was a workman in the armory, I showed it to him, to get his opinion. I opened my closet in the dining room, and they took out the guns. A shotgun and a rifle, and an old pistol of Harper's Ferry make of 1806, which was merely kept as a curiosity. They took them. Then Stevens said to me, "Have you a watch, sir?" I replied, "I have." Said he, "Where is it?" I said,

"It is on my person." Said he, "I want it, sir." Said I, "You shall not have it." Said he, "Take care, sir." He then asked, "Have you money?" I remarked, "It is very comfortable to have a good deal of it these times; money is rather scarce." Then he made the same remark to me that he did before, "Take care, sir." I then said to him, "I am going to speak very plainly; you told me your purpose was philanthropic, but you did not mention at the same time that it was robbery and rascality. I do not choose to surrender my watch." He yielded the point; did not insist on it. I told him there were four there with arms, and they could take it, but I would not surrender it. Then he said to me, "I presume you have heard of Ossawatimie Brown?" I said, "No, I have not." "Then," said he, "you have paid very little attention to Kansas matters." I remarked to him that I had become so much disgusted with Kansas and everything connected with it, that whenever I saw a paper with "Kansas" at the head of it I turned it over and did not read it. "Well," said he, "you will see him this morning," speaking apparently with great glorification. After a little time they announced to me that my carriage was ready at the door. They saw in my cabinet a camp-service that belonged to General Arista in the Mexican war; I had taken it out of the case where it belonged and placed it in the cabinet; it is of very rare and beautiful workmanship; Stevens said, "I do not know but we shall want that," but afterwards he said he did not know but that it was plated ware, instead of

silver. After some little time, some one came and announced that the carriage was at the door.

Terence Byrne. Am 44 years old, a farmer and slaveholder. Live three miles from Harper's Ferry. Had known for some time of a man named Smith who lived at the Kennedy farm about a mile and a half from me. Knew him by sight but not personally. Had met him on the road. On the morning of the 17th October left home on horseback between 5 and 6; passed a wagon on the road, driven by a colored man. And heard a voice call out, "Mr. Byrnes, stop." I reined up my horse and looked back, and recognized John E. Cook on the ground; had known Cook before in that neighborhood. He approached me on the right side of my horse, and said to me, "I am very sorry to inform you that you are my prisoner;" looked at him and smiled, and said, "You are certainly joking." He said, "I am not;" looked down, and under his coat I saw a barrel of a rifle protruding, and he kept moving it and jerking it; thought he wanted to attract my attention, from his actions, to his being armed. A moment afterwards a second man approached me, whom I have since learned was C. P. Tidd, but at that time he was unknown to me. He presented his gun to me, and said: "No parley here, or I will put a ball in you," or "through you." "You must go with us to your place, we want your negroes," or something like that; told him if that was the case I would go back rather than that he should put a ball through me; went back to my house; passed my brother on the porch just before enter-

ing the door, and whispered to him, "Servile war." We walked in. Cook, Leeman and Tidd seated themselves uninvited. Cook commenced a kind of a speech, sitting down, what we term a higher law speech, on the subject of slavery. He said that all men were created equal. Remember that distinctly. I asked my sister, whom I saw was very much alarmed, where a cousin of mine was, who was then on a visit to my house. She answered that she was upstairs; told her to call her down and be witness to everything that was said and done, as she was a lady of considerable nerve. Was too much excited to pay much attention to the speech. The first word my cousin said when she came down, was, "Cowhide those scoundrels out of the house; why do you suffer them to talk to you?" These three men, Cook, Tidd and Leeman, were all armed with Sharp's rifles and revolvers.

Just after my arrest on the road, they made a proposition to me to this effect, that I had better be quiet and give up my slaves; or, if I would give up my slaves voluntarily, they would enter into an article of agreement with me. They said they would first take me before their captain and they were certain that if I would give up my slaves voluntarily their captain would enter into an article of agreement with me to protect my person and property. Told them that was something I would not do, that I looked to the state government, or if that failed to the federal government to protect me in my person and property. They remarked they would have them anyhow. They addressed my

brother in the house, and said: "Mr. Byrne, we want your slaves." My brother's reply was: "Captain Cook, you must do as I do when I want them—hunt for them." They were too early in the morning. My brother's servant and my own, two men, had left home the Saturday evening preceding, and had not returned yet, Monday morning. They did not get them. They went off for a while and then took me in a wagon to the school house. Then they took me to Harper's Ferry. Tidd, Cook and the negroes were left behind with the wagon at the school house; proceeded with Leeman south of the school house, when I was met by one of the Brown party, whom I had known by the name of Thompson. He was armed and had a blanket over his shoulders. He extended his hand and said, "How are you, Byrne?" I said, "Good morning, Mr. Thompson; I am well, how are you?" Was then disposed to put on a cheerful face, and asked him what was the news at Harper's Ferry. He said the people were more frightened than hurt, and he passed on. It commenced raining about the same time, and Leeman suggested that we get under a tree until the shower passed. We sat down on the side of the road; had an umbrella and proposed to him to sit up close to me, and my umbrella would be some protection to him. He remarked to me, "Our Captain is no longer John Smith," or I. Smith, or J. Smith, or something like that, but was "John Brown, of Kansas notoriety." My mind was busy with the future. I was fearful of a bloody civil war; was under the impression that, unless they were there

in great numbers, they would not be foolish enough to make an attack on the borders of two slaveholding States; did not feel disposed to question Leeman at all; but he appeared to be very serious; had very little to say while at the house, and I am inclined to think he was meditating his escape from them, judging from his manner. He took a seat by the side of the fireplace in my house and put his head against the mantel and drew his cap down. He wore a cloth cap. Cook then asked him if he was hungry. He said, "Yes, he was a little hungry." Cook then asked him if he was sleepy, and he answered in the affirmative.

Lind F. Currie. Am a farmer, but also teach the school here. My school is about half way between the Kennedy farm and the Ferry. About three miles from the Ferry. Have about 30 pupils of both sexes from 8 to 15 years. An armed party came there on the morning of the 17th, about 10 o'clock; some time after I had opened my school; Cook seemed to be the leader of the party. There were three white men, Cook and Tidd, and the third I have heard since, was Leeman. There were some negroes; do not recollect the number exactly. There might have been five and might have been ten; Cook came in company with Mr. Byrne. Cook demanded possession of the school house. They were all full armed; Cook, I recollect, had a couple of revolvers sticking around his belt, and a large bowie knife and a Sharp's rifle. The negroes had long pikes, nothing else. Cook came in and demanded possession of the school house. He said he was going to

occupy it as a sort of depot for their arms; that they intended depositing their arms and implements of war there; and they brought them in. At the same time he did not want me to dismiss the school. He thought I had better keep on the school and we should not be interrupted. I told him I thought that would not answer. The children were then very much alarmed, and I could not do anything with them. They were not in condition to engage in their usual duties, and it would be impossible to keep them there. In the wagon were a number of long boxes containing probably a dozen Sharp's rifles. They brought them in and deposited them in the school house. They took out at the same time one very large black trunk and put it in the school house; I think that was all except these boxes. Cook said their intention was to free the negroes; that they intended to adopt such measures as would effectually free them, though he said nothing about running them off or anything of that kind. He said this, too; that those slaveholders who would give up their slaves voluntarily would meet with protection, but those who refused to give them up would be quartered upon; their property confiscated, used in such ways as they might think proper; at least they would receive no protection from their organization or party. He did not ask me if I were a slaveholder. Am under the impression that he discovered it afterwards. There was a little boy of a friend of mine going to my school, and I felt a special interest in him, and he was extremely alarmed, and I was fear-

ful that bad consequences might follow if I could not get him home very soon or do something with him to get him out of that fix. I asked Cook if he would allow me to take him home; he said yes, he had no objection; and I took him home to his father's house, about a half mile from there; I was gone probably an hour. I left them all there with the wagon; their wagon was not unloaded when I left. I dismissed school and allowed the children to go, but I kept this little boy because I wished to take him home myself. There was no one going his road, and I felt rather a special interest in him; would not have gone back, but there was no way of getting out that I knew of. My road lay in that direction across the river. There were two other roads, one through the Ferry, but both were occupied. The Ferry at that time was occupied by these men, and I could not get through the Ferry. There was another road passing up by Brown's house, which would have led me some miles out of my route home, but I did not go that way because I presumed that also was occupied by these men. When I got back to the school house I found nobody there but Cook and one black man with this wagon, the load of arms stowed about in the school house. I did not know the negroes, but they knew me, I presume; they were Colonel Washington's negroes, and I lived but a mile from his house; learned afterwards that they stated to Cook who I was, that I was a Virginian, a farmer and slaveholder over there; and I noticed some slight change in his

manner after I came back; he was rather cooler; but after I was there some time he became rather more communicative, and spoke of a great many things. I remained there until late in the evening. I felt as if I was detained; he did not tell me so in so many words, but when I made motions to move about he would rather get in my way and endeavor as if he would prevent me, and I scarcely knew what course to pursue; asked his permission, however, to go towards night; saw the sun was getting down, and I told him I was anxious to get home. He told me I might go, but exacted a promise that I would not reveal what I had seen going on there. I suppose between 2 and 3 o'clock probably in the afternoon, somewhere, the shots became very rapid and continuous; we could hear them from the Ferry; they were constantly firing, and I asked him, "Mr. Cook, what does that mean?" "Well," said he, "it simply means this: that those people down there are resisting our men and we are shooting them down." When I got back the negro seemed to be there as an assistant in guarding those arms. Cook told me he was there under orders from Brown, and that he could not get away. His orders from Brown were to remain there and take care of that point and protect those arms. When I was allowed by Cook to go away on a promise that I would not reveal what I saw, I went down by a road directly leading to the river; I did not go by the Ferry; it was then occupied; did not go to the Ferry at all that night; went immediately home; there was nobody there

but my mother and the negroes, and I was anxious to get home; started the next morning, however, for the Ferry; asked Cook at the school house: "With how many men did you commence this foray down there." He did not answer me directly, but said, "I do not know how many men are there now; there may be 5,000 or there may be 10,000 for aught I know." I believed it; I supposed it was all true; I had no idea that twenty-two men were going to attempt such a foray as that. He was speaking, too, about different personages. Gerrit Smith and Fred Douglass, he mentioned. He said they were interested in it, and knew of it. Those were the remarks he made. These, I think, were almost precisely the words he used: That Gerrit Smith knew of it, and was interested in it, and also Fred Douglass; and I asked him especially if Mr. Seward was concerned or interested in it, and I think he said he did not know. In the school house Cook and myself were talking of the feeling entertained towards the South by the North generally. He said he had no doubt that the efforts would be strong now and unflinching in order to extirpate the institution of slavery from the entire land. I forgot in what connection exactly he brought that in; but that was about the gist of what he was saying. He said, "We, a little band, may perish in this attempt, but," said he, "there are thousands ready at all times to occupy our places and to step into the breach." He said, further, "It is our design to use every effort to disseminate our sentiments in regard to the institution of slavery among

your own people; we will scatter them among you in different ways; we will send our people among you as colporteurs and peddlers, and we will place them in your pulpits and schools; in

different ways we will send our men among you, and by such means circulate our opinions and sentiments." Our conversation was long and varied.

Mr. Hunter introduced a written confession made by the prisoner to the jailer while in prison, which was read to the jury, as follows:

THE CONFESSION.

I became acquainted with Capt. John Brown in his camp on Middle Creek, Kansas Territory, just after the battle of Black Jack, and was with him in said camp until it was broken up and his company disbanded, by Col. Sumner of the 1st Cavalry, U. S. A. I next saw him at the Convention at Topeka, which was on the 4th of July, 1856. I next met him some days afterward in Lawrence. Did not see him again until the fall of 1857, when I met him at the house of E. B. Whitman, about four miles from Lawrence, K. T., which, I think, was about the 1st of November following. I was told that he intended to organize a company for the purpose of putting a stop to the aggressions of the Pro-Slavery men. I agreed to join him, and was asked if I knew of any other young men, who were perfectly reliable, whom I thought would join also. I recommended Richard Realf, L. F. Parsons and R. J. Hinton. I received a note on the next Sunday morning while at breakfast in the Whitney House from Capt. Brown, requesting me to come up that day, and to bring Realf, Parsons and Hinton with me. Realf and Hinton were not in town, and therefore I could not extend to them the invitation. Parsons and myself went and had a long talk with Capt. Brown.

A few days afterward I received another note from Capt. Brown, which read, as near as I can recollect, as follows:

"Date,

"Capt. Cook:

"Dear Sir—You will please get everything ready to join me at Topeka, by Monday night, next. Come to Mrs. Sheridan's, two miles south of Topeka, and bring your arms, ammunition, clothing and other articles you may require. Bring Parsons with you, if he can get ready in time. Please keep very quiet about the matter.

"Yours, etc.,

John Brown."

I made all my arrangements for starting at the time appointed. Parsons, Realf and Hinton could not get ready. I left them at Lawrence, and started in a carriage for Topeka. Stopped at the hotel over night, and left early the next morning for Mrs. Sheridan's, to meet Capt. Brown. Stayed a day and a half at Mrs. S.'s; then left

Topeka, at which place we were joined by Stephens, Moffet and Kagi. Left Topeka for Nebraska City, and camped at night on the prairie northeast of Topeka. Here, for the first, I learned that we were to leave Kansas, to attend a military school during the winter. It was the intention of the party to go to Ashtabula County, Ohio. Next morning I was sent back to Lawrence to get a draft of \$80 cashed, and to get Parsons, Realf and Hinton to go back with me. I got the draft cashed. Capt. Brown had given me orders to take boat to St. Joseph, Mo., and stage from there to Tabor, Iowa, where he would remain for a few days. I had to wait for Realf for three or four days; Hinton could not leave at that time. I started with Realf and Parsons on a stage for Leavenworth. The boats had stopped running on account of the ice. Stayed one day in Leavenworth, and then left for Weston, where we took stage for St. Joseph, and from thence to Tabor. I found C. P. Tidd and Leeman at Tabor. Our party now consisted of Capt. John Brown, Owen Brown, A. D. Stephens, Chas. Moffett, C. P. Tidd, Richard Robertson, Col. Richard Realf, L. F. Parsons, Wm. Leeman and myself. We stopped some days at Tabor, making preparations to start. Here we found that Capt. Brown's ultimate destination was the State of Virginia. Some warm words passed between him and myself in regard to the plan, which, I had supposed, was to be confined entirely to Kansas and Missouri. Realf and Parsons were of the same opinion with me. After a good deal of wrangling, we consented to go on, as we had not the means to return, and the rest of the party were so anxious that we should go with them. At Tabor we procured teams for the transportation of about 200 Sharp's rifles, which had been taken on as far as Tabor, one year before, at which place they had been left, awaiting the order of Capt. Brown. There were, also, other stores, consisting of blankets, clothing, boots and ammunition, and about 200 revolvers of the Massachusetts Arms patent, all of which we transported across the State of Iowa to Springdale, and from there to Liberty, at which place they were shipped for Ashtabula County, Ohio, where they remained till brought to Chambersburgh, Pa., and were from there transported to a house in Washington County, Md., which Capt. Brown had rented for six months, and which was situated about five miles from Harper's Ferry. It was the intention of Capt. Brown to sell his teams in Springdale, and with the proceeds to go on with the rest of the company to some place in Ashtabula County, Ohio, where we were to have a good military instructor during the winter; but he was disappointed in the sale. As he could not get cash for the teams, it was decided we should remain in the neighborhood of Springdale, and that our instructor, Col. H. Forbes, should be sent on. We stopped in Pedee, Iowa, over winter, at Mr. Maxson's, where we pursued a course of military studies. Col. H. Forbes and Capt. Brown had some words, and he (Col. F.) did not come on; consequently, A. D. Stephens was our drillmaster. The people of the neighborhood did not know our purpose. We remained at Pedee till about the middle of April, when we left for Chatham, Canada, via Chicago and Detroit. We

stayed about two weeks in Chatham; some of the party stayed six or seven weeks. We left Chatham for Cleveland, and remained there until late in June. In the meantime, Capt. Brown went east, on business; but previous to his departure, he had learned that Col. Forbes had betrayed his plans to some extent. This, together with the scantiness of his funds, induced him to delay the commencement of his work, and was the means, for the time being, of disbanding the party. He had also received some information which called for his immediate attention in Kansas. I wished to go with him, but he said that I was too well known there, and requested me and some others to go to Harper's Ferry, Va., to see how things were there, and to gain information. While we were in Chatham he called a convention, the purpose of which was to make a complete and thorough organization. He issued a written circular, which he sent to various persons in the United States and Canada. The circular, as near as I can recollect, read as follows:

"Chatham, May —, 1858.

"M.—— ———

"Dear Sir—We have issued a call for a very quiet convention at this place, to which we shall be happy to see any true friends of freedom, and to which you are most earnestly invited to give your attendance.

"Yours respectfully,

John Brown."

As the names were left blank, I do not know to whom they were sent, though I wrote several of them. I learned, however, that one was sent to Frederick Douglass, and I think Gerrit Smith also received one. Who the others were sent to, I do not know. Neither Douglass nor Smith attended the convention. I suppose some twenty-five or thirty of these circulars were sent, but as they were directed by Capt. Brown or J. H. Kagi, I do not know the names of the parties to whom they were addressed. I do know, however, that they were sent to none save those whom Capt. Brown knew to be radical Abolitionists. I think it was about ten days from the time the circulars were sent, that the convention met. The place of meeting was in one of the negro churches in Chatham. The convention, I think, was called to order by J. H. Kagi. Its object was then stated, which was, to complete a thorough organization, and the formation of a constitution. The first business was to elect a President and Secretary. Elder Monroe, a colored minister, was elected President, and J. H. Kagi, Secretary. The next business was to form a constitution. Capt. Brown had already drawn up one, which, on motion, was read by the Secretary. On motion, it was ordered that each article of the constitution be taken up and separately amended and passed, which was done. On motion, the constitution was then adopted as a whole. The next business was to nominate a Commander-in-Chief, Secretary of War, and Secretary of State. Capt. John Brown was unanimously elected Commander-in-

Chief; J. H. Kagi, Secretary of War, and Richard Realf, Secretary of State. Elder Monroe was to act as President until another was chosen. A. M. Chapman, I think, was to act as Vice-President. Doctor M. K. Delaney was one of the Corresponding Secretaries of the organization. There were some others from the United States, whose names I do not now remember. Most of the delegates to the convention were from Canada. After the constitution was adopted, the members took their oath to support it. It was then signed by all present. During the interval between the call for the convention and its assembling, regular meetings were held at Barbour's Hotel, where we were stopping, by those who were known to be true to the cause, at which meetings plans were laid and discussed. There were no white men at the convention, save the members of our company. Men and money had both been promised from Catham and other parts of Canada. When the convention broke up, news was received that Col. H. Forbes, who had joined in the movement had given information to the government. This, of course, delayed the time of attack. A day or two afterward, most of our party took the boat to Cleveland; Jno. H. Kagi, Richard Realf, Wm. H. Leeman, Richard Robertson and Capt. Brown remaining. Capt. B., however, started in a day or two for the East. Kagi, I think, went to some other town in Canada, to set up the type and to get the constitution printed, which he completed before he returned to Cleveland. We remained in Cleveland for some weeks, at which place, for the time being, the company disbanded. Capt. Brown had had the plan of the insurrection in contemplation for several years—in fact, told me that it had been the chief aim of his life to carry out and accomplish the abolition of slavery.

In his trip east he did not realize the amount of money that he expected. The money had been promised *bona fide*, but owing to the tightness of the money market, they failed to comply with his demands. The funds were necessary to the accomplishment of his plans. I afterward learned that there was a lack of confidence in the success of his scheme. It was, therefore, necessary that a movement should be made in another direction, to demonstrate the practicability of his plan. This he made about a year ago, by his invasion of Missouri, and the taking of about a dozen slaves, together with horses, cattle, etc., into Kansas, in defiance of the United States Marshal and his posse. From Kansas he took them to Canada, via Iowa City and Cleveland. At the latter place he remained some days, and I think, disposed of his horses there. It seems that the United States Marshal was afraid to arrest him, and this was all that was wanting to give confidence to the wavering in the practicability of his plan and its ultimate success. He came to Harper's Ferry about the last of June, though I did not see him till late in July, or the early part of August, when we met on Shenandoah street, Harper's Ferry, opposite Tearney's store. I do not know who were his aiders or abettors, but have heard him mention in connection with it the names of Gerrit Smith of New York, Howe of Boston, and Sanborn and Thaddeus Hyatt of New York City. What connection, and how

far connected with his plan, I do not know, but I know he wrote a letter, a few weeks previous to his attack, to some gentlemen in Boston, which read, as near as I can recollect, as follows:

“Date ———.

“Gentlemen—I have got nearly all my machines on, and shall be ready to start them in a few days, unless prevented by a special Providence. Everything is working well. I shall want all the funds you promised me in a few days.

“Yours, truly,

Calm & Still.”

In the meantime the men who had engaged to go with him had most of them arrived at Chambersburgh, Pa., and been sent to the place which he had rented in Washington County, Md., about five miles from Harper's Ferry. The greater part of the men kept out of sight during the day, for fear of attracting attention. The arms, munitions, etc., were carted from Chambersburgh to his rendezvous. The spear-heads and guards came in strong boxes, and the shafts passed for fork-handles. They were put together by our own men, at the house where most of them were found. Letters of importance came to the Chambersburg postoffice, and were sent by some of our own party to headquarters. The letters of minor importance came to the Ferry, to J. Smith & Sons. All allusions to our business were made in such a blind way that they would not have been understood by any outside parties, even should they have been miscarried. The attack was made sooner than it was intended, owing to some friends in Boston writing a letter, finding fault with the management of Capt. B., and what to them seemed his unnecessary delay and expense. I do not know who those persons were, or how far they were cognizant of his (Capt. B.'s) plans. But I do know that Dr. Howe gave Capt. Brown a breach-loading carbine and a pair of muzzle-loading pistols, all of Government manufacture. They were left either at the house of Capt. Brown or at the school house, where most of the arms were conveyed. At what time and for what purpose they were given to Capt. Brown I do not know. It was supposed that Colonel Hugh Forbes was dead. I was told by Capt. Brown that when on East he had been told by Thaddeus Hyatt of New York, that some of the negroes at that place had informed him (Hyatt) that Forbes had “gone up”—a phrase which Capt. B. and the rest of our company understood to mean that he had been killed. I do not think that Forbes had any cognizance of our plans from the time of our leaving Pedee, a year ago last April. Previous to his quarrel with Captain Brown, we considered that he would hold a place next to Brown in command. I do not know the present whereabouts of Luke F. Parsons or Charles Moffett. The last I heard of Parsons was through Capt. Brown, who informed me that Parsons had started for Pike's Peak, and that he (Brown) thought he would be pretty tolerably peaked before he got there. A short time before the attack on Harper's Ferry, Capt. Brown re-

quested me to find out in some way, without creating suspicion, the number of male slaves on or near the roads leading from the Ferry, for a distance of eight or ten miles, and to make such memoranda as would be unintelligible to others, but in such a manner that I could make it plain to him and the rest of the company. He gave me two dollars to pay my expenses with. I took the road from Harper's Ferry to Charlestown, under the plea of gaining statistics for a work to be published by John Henri, and to decide a wager between him and Mr. Smith. I did not go on any other road. A few days after this, Capt. Brown sent his wagon over by his son Oliver and Jeremiah Anderson, to bring my wife and myself to his house. They gave me a note from him, which, as near as I can recollect, read as follows:

"Mr. Cook—Dear Sir: You will please get everything ready to come with your wife to my house this morning. My wagon will wait for you. I shall take your wife to Chambersburgh, and shall start early tomorrow morning. Be as expeditious as possible. Be very careful not to say or do anything which will awaken any suspicion.

"You can say your wife is going to make a visit to some friends of hers in the country. Be very careful that you do not let any of our plans leak out.

"Yours, etc.,

"J. Smith."

My wife and myself accordingly left Harper's Ferry that night, accompanied by Oliver Brown and Jeremiah Anderson, for Captain Brown's house in Washington County, Md.

The next, after dinner, Captain B. and his son Watson, together with his wife and child, started for Chambersburgh. When Capt. B. returned, he told me that he had got her a good boarding place in Chambersburgh, at Mrs. Ritterer's, and that she liked her boarding place very well.

There were some six or seven in our party who did not know anything of our constitution, and, as I have since understood, were also ignorant of the plan of operations until the Sunday morning previous to the attack. Among this number were Edwin Coppie, Barelay Coppie, Francis J. Merriam, Shields Green, John Copland and Leary.

The constitution was read to them by A. D. Stephens, and the oath afterward administered by Capt. Brown. Sunday evening previous to our departure, Capt. Brown made his final arrangements for the capture of Harper's Ferry, and gave to his men their orders. In closing, he said: "And now, gentlemen, let me press this one thing on your minds: you all know how dear life is to you, and how dear your lives are to your friends; and in remembering that, consider that the lives of others are as dear to them as yours are to you; do not, therefore, take the life of any one if you can possibly avoid it; but if it is necessary to take life in order to save your own, then make sure work of it."

After taking the town, I was placed under Capt. Stephens, who received orders to proceed to the house of Col. Lewis Washington, and to take him prisoner, and to bring his slaves, horses, and arms, and as we came back to take Mr. Allstadt and his slaves, and to bring them all to Captain Brown at the Armory. When we returned, I stayed a short time in the engine house to get warm, as I was chilled through. After I got warm, Capt. Brown ordered me to go with C. P. Tidd, who was to take William H. Leeman, and I think four slaves with him, in Col. Washington's large wagon, across the river, and to take Terrence Burns and his brother and their slaves as prisoners at their own house, while Tidd and the slaves who accompanied him were to go to Capt. Brown's house, and to load in the arms and bring them down to the school house, stopping for the Burnses and their guard. William H. Leeman remained with me to guard the prisoners. On return of the wagon, in compliance with orders, we all started for the school house. When we got there, I was to remain, by Capt. Brown's orders, with one of the slaves to guard the arms, while C. P. Tidd, with the other negroes, was to go back for the rest of the arms, and Burns was to be sent with William H. Leeman to Capt. Brown at the Armory. It was at this time that William Thompson came up from the Ferry, and reported that everything was all right, and then hurried on to overtake William H. Leeman. A short time after the departure of Tidd I heard a good deal of firing, and became anxious to know the cause, but by orders were strict to remain at the school house and guard the arms, and I obeyed the orders to the letter. About four o'clock in the evening C. P. Tidd came with the second load. I then took one of the negroes with me and started for the Ferry. I met a negro woman a short distance below the school house, who informed me that they were fighting hard at the Ferry. I hurried on till I came to the Lock kept by George Hardy, about a mile above the bridge, where I saw his wife and Mrs. Elizabeth Read, who told me that our men were hemmed in, and that several of them had been shot. I expressed my intention to try to get to them, when Mrs. Hardy asked me to try to get her husband released from the engine house. I told her I would. Mrs. Read begged of me not to go down to the Ferry. She said I would be shot. I told her I must make an attempt to save my comrades, and passed on down the road. A short distance below the Lock I met two boys whom I knew, and they told me that our men were all hemmed in by troops from Charlestown, Martinsburg, Hagerstown, and Shepherdstown. The negro who was with me had been very much frightened at the first report we received, and as the boys told me the troops were coming up the road after us soon, I sent him (the negro) back to inform Tidd, while I hastened down the road. After going down opposite the Ferry, I ascended the mountain, in order to get a better view of the position of our opponents.

I saw that our party were completely surrounded, and as I saw a body of men on High street firing down upon them—they were about half a mile distant from me—I thought I would draw their

fire upon myself; I therefore raised my rifle and took the best aim I could and fired. It had the desired effect; for the very instant the party returned it. Several shots were exchanged. The last one they fired at me cut a small limb I had hold of just below my hand, and gave me a fall of about fifteen feet, by which I was severely bruised and my flesh somewhat lacerated. I descended from the mountain and passed down the road to the Crane on the bank of the canal, about fifty yards from Mr. W.'s store. I saw several heads behind the door post looking at me; I took a position behind the Crane, and cocking my rifle, beckoned to some of them to come to me; after some hesitation, one of them approached and then another, both of whom knew me. I asked them if there were any armed men in the store. They pledged me their word and honor that there were none. I then passed down to the lock house, and went down the steps to the lock, where I saw William McGreg, and questioned him in regard to the troops on the other side. He told me that the bridge was filled by our opponents, and that all of our party were dead but seven—that two of them were shot while trying to escape across the river. He begged me to leave immediately. After questioning him in regard to the position and number of the troops, and from what sources he received his information, I bade him good night, and started up the road at a rapid walk. I stopped at the house of an Irish family at the foot of the hill, and got a cup of coffee and some eatables. I was informed by them that Captain Brown was dead; that he had been shot about four o'clock in the afternoon. At the time I believed this report to be true. I went on up to the school house, and found the shutters and doors closed; called to Tidd and the boys, but received no answer; cocked my rifle, and then opened the door. It was dark at the time. Some of the goods had been placed in the middle of the floor, and, in the dark, looked like men crouching. I uncocked my rifle, and drew my revolver, and then struck a match; saw that there was no one in the school house; went into the bushes back of the school house, and called for the boys. Receiving no answer, I went across the road into some pines, and again called, but could find no one. I then started up the road toward Captain Brown's house; I saw a party of men coming down the road; when within about fifty yards I ordered them to halt; they recognized my voice, and called me. I found them to be Charles P. Tidd, Owen Brown, Barclay Coppie, F. J. Merriam and a negro who belonged to Washington or Allstadt. They asked me the news, and I gave the information that I received on the canal lock, and on the road. It seemed that they thought it would be sheer madness in them to attempt a rescue of our comrades, and it was finally determined to return to the house of Capt. Brown. I found that Tidd, before leaving the school house to go for Brown, Coppie and Merriam, had stationed the negroes in a good position in the timber back of the school house. On his return, however, they could not be found. We therefore left for Captain Brown's house. Here we got a few articles which would be necessary, and then went over into the timber on the

side of the mountain, a few yards beyond the house, where the spears were kept. Here we laid down and went to sleep. About three o'clock in the morning, one of our party awakened and found that the negro had left us. He immediately aroused the rest of the party, and we concluded to go to the top of the mountain before light. Here we remained for a few hours, and then passed over to the other side of the mountain, where we waited till dark, and then crossed the valley to the other range beyond.

I have forgotten to state previously, that before I left Captain Brown in Cleveland, Ohio, he gave me orders to trust no one with our secret, and to hold no conversation with the slaves, which orders I obeyed with but a single exception, which I here mention. The exception to which I allude is simply this: I met a party of four negroes, two free and two slave, near Bolivar, Jefferson County, Virginia. I asked them if they had ever thought about their freedom. They replied, "they thought they ought to be free," but expressed doubts that they ever would be. I told them that time might come before many years, but for the present to keep dark and look for the good time coming, and left them.

I see from some of the newspapers, that I have been represented as Captain Brown's chief aid. This is incorrect. Kagi was second in command, Stephens third, Hazlitt fourth. Further than this, I do not know that Captain Brown had made known any preference as to superiority or rank. Edwin Coppie and Dolphin Thomas were the only lieutenants he commissioned. Owen Brown, Barclay Coppie, and F. J. Merriam were not at the Ferry during the time the attack was made, but remained by order of Captain Brown to take charge of the premises, and to guard the arms left at Brown's house in case of an attack. I do not know of any person in the Ferry or its neighborhood who knew of our plans, save our own party, and they were pledged to keep it secret.

Richard Realf, one of our original party, and our Secretary of State, came from Chatham to Cleveland a few days before Capt. Brown's arrival from the East. Soon after his arrival he (Capt. B.) sent Realf to New York City, at which place he embarked for England for the purpose of carrying out the plans of Capt. Brown. Realf was born and raised in England. He is a peasant's son, but his native talents brought him into the notice of some of the nobility, who took charge of him and made arrangements to give him a finished education. He was taken into the family of Lady Noel Byron, where he made his home while pursuing his studies. Falling in love with a young lady of noble birth, who was a relative of Lady Byron's, he was censured by Lady B. for his presumption. He became offended at her interference, and finally left Lady B. to work his own way in the world. About this time the Chartist movement was made, which Realf joined, and the result was, he was obliged to seek safety by emigrating to America. He made his home some years in New York City. A part of the time he was there, he was engaged as assistant superintendent of the Five Points Mission. He is well known as an author and a poet. He gave up his

situation as assistant superintendent, and went to Kansas in the summer or fall of 1856. I first met him in Lawrence, Kansas. No word was received from him to my knowledge, after he left for England, to which place he went in his own capacity and that of our Secretary of State, to solicit funds for the support of our organization. He proposed to deliver a course of lectures in various parts of England, and the net proceeds of which were to be given to carry out Capt. Brown's plan. He is a man of rare talents, and a powerful and fluent speaker. He is about 28 years of age. Mr. Kagi, I believe, got a letter from some one in England a few months ago, stating that Realf had sailed for this country, and that he had quite a sum of money with him, but further than that, we have been unable to find any trace of him. Capt. Brown and the rest of our company who knew him, think that he is dead.

At the time Mr. Allstadt was taken, I was not at his house, but in the carriage with Col. Lewis Washington, opposite the house. I do not think any arms were placed in the hands of his slaves till they arrived at the musket armory. I did not see any of the spears on our way from the Ferry to Col. Washington's—there were none taken out, to my knowledge. After stopping about half an hour at the engine house to get warm, I was called out by Captain Brown, and then saw, for the first time, the slaves with spears in their hands. I do not know who gave them the spears, but it was some of our party, and probably by the order of Captain Brown.

The negro who was with me on Monday evening, when I left the school house for the Ferry, was armed with a double barreled shotgun, and I think a revolving pistol of the Massachusetts arms manufacture. Who delivered him the arms I do not know. He was under my control till I sent him back to report to Tidd that the troops were coming up. He obeyed orders while with me.

I was commissioned as a captain on the Sunday of the insurrection, at the same time the others were, and with them took the oath prescribed in Article 48 in the Constitution.

George B. Gill joined us before leaving Iowa, in the spring, as did Stewart Taylor.

November 8.

MR. VOORHEES' SPEECH.

Mr. Voorhees. Gentlemen of the Jury: The place I occupy in standing before you at this time is one clothed with a responsibility as weighty and as delicate as was ever assigned to an advocate in behalf of an unfortunate fellow-man. No language that I can employ could give any additional force to the circumstances by which I am surrounded, and which press so heavily on the public mind as well as on my own. I come, too, as a stranger to each one of you. Your faces I know only

by the common image we bear to our Maker; but, in your exalted character of citizens of the ancient and proud Commonwealth of Virginia, and of the American Union, I bear to you a passport of friendship and a letter of introduction.

I came from the sunset side of your Western mountains—from beyond the rivers that now skirt the borders of your great State; but I come not as an alien to a foreign land, but rather as one who returns to the home of his ancestors, and to the household from which he sprang. I come here not as an enemy, but as a friend; with interests common with yourselves, hoping for your hopes, and praying that the prosperity and glory of Virginia may be perpetual. Nor do I forget that the very soil on which I live in my Western home was once owned by this venerable Commonwealth as much as the soil on which I now stand. Her laws there once prevailed, and all her institutions were there established as they are here. Not only my own State of Indiana, but also four other great States in the Northwest, stand as enduring and lofty monuments of Virginia's magnanimity and princely liberality. Her donation to the General Government made them sovereign States; and since God gave the fruitful land of Canaan to Moses and Israel, such a gift of present and future empire has never been made to any people. Coming from the bosom of one of these States, can I forget the fealty and duty which I owe to the supremacy of your laws, the sacredness of your citizenship, or the sovereignty of your State? Rather may the child forget its parent and smite with unnatural hand the author of its being!

The mission on which I have visited your State is to me, and to those who are with me, one full of the bitterness and poison of calamity and grief. The high, the sacred, the holy duty of private friendship for a family fondly beloved by all who have ever witnessed their illustrations of the purest social virtues, commands, and alone commands my presence here. And, while they are overwhelmed by the terrible blow which has fallen upon them through the action of the misguided young man at the bar, yet I speak their sentiments as well as my own when I say that one gratification, pure and unalloyed,

has been afforded us since our melancholy arrival in your midst. It has been to witness the progress of this Court from day to day, surrounded by all that is calculated to bias the minds of men, but pursuing with calmness, with dignity, and impartiality, the true course of the law and the even pathway of justice. I would not be true to the dictates of my own heart and judgment, did I not bear voluntary and emphatic witness to the wisdom and patient kindness of his Honor on the bench; the manly and generous spirit which has characterized the counsel for the prosecution; the true, devoted, and highly professional manner of the local counsel here for the defense; the scrupulous truthfulness of the witnesses who have testified, and the decorum and justness of the juries who have acted their parts from the first hour of this Court to the present time. I speak in the hearing of the country. An important and memorable page in history is being written. Let it not be omitted that Virginia has thrown around a band of deluded men, who invaded her soil with treason and murder, all the safeguards of her Constitution and laws, and placed them in her Courts upon an equality with her own citizens. I know of what I speak, and my love of truth and sense of right forbid me to be silent on this point.

Gentlemen, I am not here on behalf of this pale-faced, fair-haired wanderer from his home and the paths of duty, to talk to you about legal technicalities of law born of laborious analysis by the light of the midnight lamp. I place him before you on no such ground. He is in the hands of friends who abhor the conduct of which he has been guilty. But does that fact debar him of human sympathy? Does the simple act smite the erring brother with a leprosy which forbids the touch of the hand of affection? Is his voice of repentance and appeal for forgiveness stifled in his mouth? If so, the meek Savior of the world would have recoiled with horror from Mary Magdalene, and spurned the repentant sorrow of Peter who betrayed him. For my client I avow every sympathy. Fallen and undone; broken and ruined as he is by the fall, yet, from the depths of the fearful chasm in which he lies, I hear the common call which the wretched make for sympathy

more clearly than if it issued from the loftiest pyramid of wealth and power. If He who made the earth and hung the sun and moon and stars on high to give it light, and created man a joint heir of eternal wealth, and put within him an immortal spark of celestial flame which surrounds His throne, could remember mercy in executing justice when His whole plan of Divine government was assailed and deranged; when His law was set at defiance and violated; when the purity of Eden had been defiled by the presence and counsels of the serpent—why, so can I, and can you, when the wrong and the crime stand confessed, and every atonement is made to the majesty of the law which the prisoner has in his power to make.

Let us come near to each other and have a proper understanding. I am laboring with you for an object. I think I know something of the human heart and of the leaping attributes by which it is governed throughout the world. By virtue of those attributes, I feel that we may annihilate the distance that separates our homes, sweep away all blinding excitement, and sit down together and reason upon this most tragic and melancholy affair as become citizens of the same government, proud of the same lineage, actuated by the same interests, and forever linked to the same destiny. You are not merely impanelled in your capacity as jurors to pass upon the life of this erratic youth before you, but the nation cannot be divorced from a deep and permanent interest in your deliberations. The crime for which the law claims his life as forfeit is one connected with a question of the weightiest national import—a question which, without any fault of yours, has rudely strained and shaken the bonds which embrace and hold together the States of the Union. This trial is incident to that question, and must be met in the face of the whole nation, and in the view of the entire American people, as a matter of universal interest and concern. The very nature of the offense now under discussion lifts us all to a point of observation on which statesmen and patriots have long bent their anxious looks. And the pressing, ever present and determined question of the hour which now sits with you in the

jury box, and will retire with you to your deliberations on your verdict, is, How shall you most fully meet the requirements of the American people at large; best conduce to the peace and repose of the Union; allay the rushing winds that are abroad on the face of the great deep; say peace be still to the angry elements of passion and treasonable agitation, and at the same time do all your duty as honest and conscientious men administering the laws of your State? If it shall be in my power, in some measure, to point out the course by which these great objects may be attained, I shall mark this otherwise sad day on which I address you as the brightest to me in the calendar of time. And, further, if these objects are to be attained on your part by invoking in your midst and following the winning counsels of the meek-eyed and gentle angel of mercy—if you can faithfully discharge your oaths as jurors, and, at the same time, best meet the obligations which rest upon you as American citizens by tempering the bitter cup which justice commends to the lips of the prisoner with the ingredient of clemency, I know you, by the universal law of the human heart, will rejoice in such an opportunity, and join in the public and private happiness which will flow from your verdict. By the help of God, and appealing to him for the purity of the motives which animate my breast I now proceed to demonstrate such a course as both just and wise in the case of John E. Cook.

First of all things, gentlemen of the jury, is your duty to Virginia. Whatever she requires at your hands, that you are to give. Your first love belongs to her; she is the mother who has nursed you, and the Queen Mother to whom you owe allegiance. As an advocate and defender at home of the doctrines of the State rights men of the school of 1798, I do not come here to ask you to abate one jot or tittle of your affection and jealousy for the honor and interest of Virginia. Indeed, were such an invocation necessary, which I know it is not, I would invoke you by the great names of your history, by the memory of your ancient renown, by the thrilling associations of the classic soil on which we stand, and by the present commanding attitude which your Commonwealth holds

before the world, to be true and loyal to what she has been, what she is, and what she hopes to be.

But how stands Virginia in reference to the assault which was made upon her citizens and her soil at Harper's Ferry on the 17th day of October, 1859, and what vindication does she need at your hands for the outrage? Are the circumstances such as to require of her the re-enactment of the Mosaic law, repealed by the benign teachings of the Nazarene on the shores of Galilee? Is she required to say in a stern and inexorable spirit:

"And if any mischief follow, then thou shalt give life for life,
Eye for eye, tooth for tooth, hand for hand, foot for foot,
Burning for burning, wound for wound, stripe for stripe?"

Not so. She asks nothing of the kind at your hands. Punishment has already been swift and sure. The measure of her vengeance for the great wrong committed against her is full, and her vindication is ample before the world. She met her invaders on the spot, and those who lifted their hands against her, are, most of them, in the graves to which Virginians consigned them; a few bound in her prisons, and a few others wanderers and fugitives on the face of the earth. The Executive and citizens of your State guided the bolt which fell upon this mad offspring of a loathsome fanaticism, and the invasion perished at a single blow. And, in the spirit of the answer of Cush to King David, I would say to you: "The enemies of the State of Virginia, and all that rise against her to do her hurt, be as these men are." But as the great King of Israel rose up and went to his chamber, and wept over the untimely fall of Absalom, the rebellious son of his own loins, who had lifted his parricidal hand against the life of an indulgent father, may not the world commend a similar emotion in the breast of a jury of Virginians over the sorrowful fate of the youthful prisoner at the bar! You will probably say that the lives of your citizens have been sacrificed. I answer that it is lamentably true; but it is also true, that life has been taken already to atone for life; that the blood of murderers, older and wiser than the prisoner, has been poured

out in response to the cry of the blood of your citizens from the ground. You will say that the soil of your State has been polluted by the foot of the traitor. I answer, that the foot-step rested but as for a moment on your border, and was swept away by a whirlwind of patriotic indignation. You will say, that your law has been violated; your dignity and honor as a free people insulted. I answer, that, alas! it is too true; but I answer, also, that it is equally true, that your laws have been fully, thoroughly and justly vindicated. Here, in this court, again and again, the sword of justice, wielded by an even hand, has fallen upon the miserable remnant of the confederated band who impiously mocked the integrity of the American Union by assailing the institutions of Virginia. The leader stands at the foot of the gallows, and on its heights will expiate many crimes against the peace and laws of this country—not least amongst which is the crime of enlisting young men, such as the prisoner, in a cruise of piracy against you and I, and all law-abiding citizens of this happy Union. Let the leader of the mutiny on shipboard perish; but if it appears that young men have followed false guidance, and been bound in the despotism of an iron will, order them back to duty, and give them one more chance to show whether they are worthy of life or death. Virginia can thus afford to act. It is one of the chief blessings of power that it can extend mercy to the weak; and the crown jewel of courage is magnanimity to the fallen.

But there is another point on which Virginia, though mourning for the death of her citizens, has triumphantly met the aspersions and calumnies of the enemies of her domestic institutions by reason of the late outbreak at Harper's Ferry. The institution of domestic slavery today stands before the world more fully justified than ever before in the history of this, or, indeed, perhaps, of any other country. The liberator, urged on by a false and spurious philanthropy, deceitful and sinister in its origin, and selfish and corrupt in its practice, came into your midst to set the bondsman free, and though violence tore him from his master, though liberty was sounded in his ear, though a leader was proclaimed to lead him to the

promised land, though an impiously, self-styled Moses of deliverance came in the might of the sword and placed arms of bold attack and strong defense in his hands, yet what a spectacle do we behold! The bondsman refuses to be free; drops the implements of war from his hands; is deaf to the call of freedom; turns against his liberators, and, by instinct, obeys the injunction of Paul by returning to his master! Shall this pass for nothing? Shall no note be made of this piece of the logic of our Government? Shall the voice of the African himself die unheard on the question of his own freedom? No. It shall be perpetuated. It shall be put in the record. The slave himself, under circumstances the most tempting and favorable to his love of freedom, if he has any; surrounded by men and scenes beckoning him on to vengeance, to liberty and dominion; with the power of life and death over his master in his hands, and the world open before him; with the manacle and chain, which was never forged or wielded except in the heated furnace of a riotous and prurient imagination, stricken from his body, turns eagerly and fondly to the conditions assigned him by the law not merely of Virginia, not merely of Legislatures and lawmakers, but by the law of his being, by the law which governs his relation to the white man wherever the contact exists, by the law which made the hewers of wood and drawers of water under a government formed by God himself, and which, since the world began down to the present time, has made the inferior subordinate to the superior whenever and wherever two unequal races have been brought together. Let this fact go forth to the country. Let it be fully understood by those men and women who languish and sigh over the condition of your institutions, that their sympathy is repudiated, and that they themselves are despised by both races in the South. This, too, Virginia has proven.

Is there anything left to be done by your verdict in peremptorily taking the life of the prisoner, and offering it a sacrifice to heal the wrongs of your State? I humbly conceive that Virginia in no respect needs such a sacrifice. This much I think I have shown.

And now let us turn to the prisoner. If Virginia, through you, can afford to be clement, your inquiry will then be, is the object on whom you are asked to bestow your clemency worthy to receive it? I know the field on which I now enter is filled with preconceived ideas; but, in the spirit of truth, I shall explore it, and, by the truth of what I say, I am willing that my unfortunate client may be judged by you, and, moreover, by that God in whose presence no hidden things exist, and before whom, at no distant day, you and I shall stand with him and see him and know him as he is, and not as we see him and know him now, encompassed by the dread and awful calamities of the present hour.

Who is John E. Cook? He has the right himself to be heard before you; but I will answer for him. Sprung from an ancestry of loyal attachment to the American Government, he inherits no blood of tainted impurity. His grandfather an officer of the Revolution by which your liberty as well as mine was achieved, and his gray-haired father, who lives to weep over him, a soldier of the war of 1812, he brings no dishonored lineage into your presence. If the blood which flows in his veins has been offered against your peace, the same blood in the veins of those from whose loins he sprang has been offered in fierce shock of battle and foreign invasion in behalf of the people of Virginia and the Union. Born of a parent stock occupying the middle walks of life, and possessed of all those tender and domestic virtues which escape the contamination of those vices that dwell on the frozen peaks, or in the dark and deep caverns of society, he would not have been here had precept and example been remembered in the prodigal wanderings of his short and checkered life. Poor, deluded boy! wayward, misled child! An evil star presided over thy natal hour, and smote it with gloom. The hour in which thy mother bore thee and blessed thee as her blue-eyed babe upon her knee, is to her now one of bitterness, as she stands near the bank of the chill river of death, and looks back on a name hitherto as unspotted and as pure as the unstained snow. May God stand by and sus-

tain her, and preserve the mothers of Virginia from the waves of sorrow that now roll over her!

Not only the ancestry of John E. Cook, but all with whom his life is now bound up, stand before the country as your friends and the friends of the Constitution, as handed down to us by the valor and wisdom of Washington. I will not shrink from the full and absolute recognition of my position. You and I, gentlemen of the jury, can have no secrets in this case from one another. We will withdraw the curtains, and look each other fully in the face. A citizen of the State in which I live, who, by virtue of his brilliant and commanding intellect, and because of his sound and national principles, has been placed at an early period of his life in the highest position in the power of a State to give, is here beside me, and wears near his heart a sister's likeness to this boy. And there is not in the wide world, on the broad green face of the earth, a man, whose heart is not wholly abandoned to selfish depravity, who will not say that his presence here is commended by honor, love, duty and fidelity to all that ennoble our poor fallen race. Let poor, miserable, despised, loathed, spurned and abhorred miscreants cavil and revile at this proud act of painful duty. The true and eternal impulses of the human heart, the world over, constitute our appellate court.

But the Governor of the State of Indiana needs neither vindication nor defense as a statesman of catholic opinions, nor as a man fully appreciating the duties of domestic life. Rather do I allude to his presence here and his position as to the agitating questions of the day, to show that something else besides ancestral inheritance or the teachings of family connections, has given the fatal bias to the prisoner's mind, which led him away from the worship of his own household gods, and into the communion of idolators, aliens and enemies to the pure faith of an American citizen. And it seems to me, in view of the services which those who love this boy have rendered to their country, and in view of their devotion to the true construction of the Constitution and the injunctions of our fathers, I might rehearse and quote to you with

propriety a passage from the history of the latter years of the wisest king Israel ever had :

“For it came to pass when Solomon was old that his wives turned away his heart after other gods; and his heart was not perfect with the Lord his God as was the heart of David, his father. For Solomon went after Ashteroth, the goddess of the Ionians, and after the abomination of the Ammonites.

“And Solomon did evil in the sight of the Lord, and went not fully after the Lord as did David his father.

“And the Lord was angry with Solomon because his heart was turned from the Lord God of Israel which had appeared unto him twice;

“And had commanded him concerning this thing that he should not go after other gods; but he kept not that which the Lord commanded.

“Wherefore the Lord said unto Solomon, forasmuch as this is done unto thee, and thou has not kept my covenant and my statutes which I have commanded thee, I will surely rend the kingdom from thee, and will give it to thy servant.

“Notwithstanding, in thy days I will not do it for David thy father’s sake.”

The King, who was forgiven, and spared not merely his life, but his kingdom also, and his glory during his lifetime, because of the loyalty of his father, who had gone before him, was old and very wise, and full of experience. The prisoner before you has done no more than to disobey your covenants and statutes, and pleads that it has been done in the early morning of life, his first offense, and under the baneful influence of a school of philosophy which he once thought sincere and right, but which he now here, once and forever, to you, and before the world, renounces as false, pernicious and pestilential. Shall man be more intolerant than God? Shall you be less merciful than He, in whose presence your only plea will be mercy! mercy! mercy! Will you say you dare not recommend mercy to John E. Cook, when divine examples and the appeals of your own consciences are on your side? I will never believe it until the appalling fact is announced by you.

But let us advance. I have spoken of Cook, his parentage and connections. Again comes the question, who is he? And

now I proceed to answer it with reference to the transactions at Harper's Ferry, and with reference to the facts of the case. Let us spread broad and wide before us the moving panorama of evil which reaches its denouement at Harper's Ferry. There are hearts and feelings woven in the destiny of the prisoner which shall be relieved and solaced as far as truth, dragged up from the depths of this misfortune, can relieve and solace them. In an evil hour—and may it be forever accursed!—John E. Cook met John Brown on the prostituted plains of Kansas. On that field of fanaticism, three years ago, this fair and gentle youth was thrown into contact with the pirate and robber of civil warfare. To others whose sympathies he has enlisted, I will leave the task of transmitting John Brown as a martyr and hero to posterity. In my eyes he stands the chief of criminals, the thief of property stolen—horses and slaves—from the citizens of Missouri, a falsifier here in this court, as I shall yet show, and a murderer not only of your citizens, but of the young men who have already lost their lives in his bloody foray on your border. This is not pleasant to say, but it is the truth, and as such ought to be and shall be said. You have seen John Brown, the leader. Now look on John Cook, the follower. He is in evidence before you. Never did I plead for a face that I was more willing to show. If evil is there, I have not seen it. If murder is there, I am to learn to mark the lines of the murderer anew. If the assassin is in that young face, then commend me to the look of an assassin. No, gentlemen, it is a face for a mother to love, and a sister to idolize, and in which the natural goodness of his heart pleads trumpet-tongued against the deep damnation that estranged him from home and its principles. Let us look at the meeting of these two men. Place them side by side. Put the young face by the old face; the young head by the old head. We have seen somewhat of the history of the young man. Look now for a moment at the history of the old man. He did not go to Kansas as a peaceable settler with his interests linked to the legitimate growth and prosperity of that ill-fated Territory. He went there, in the language of one who

has spoken for him since his confinement here, as the Moses of the slaves' deliverance. He went there to fulfill a dream, which had tortured his brain for thirty years, that he was to be the leader of a sacred Exodus from bondage. He went there for war, and not for peace. He went there to call around him the wayward and unstable elements of a society in which the bonds of order, law, and religion were loosened, and the angry demon of discord was unchained. Storm was his element by his own showing. He courted the fierce tempest. He sowed the wind that he might reap the whirlwind. He invoked the lightning and gloried in its devastation. Sixty summers and winters had passed over his head, and planted the seeds of spring and gathered the harvests of autumn in the fields of his experience. He was the hero, too, of battles there. If laurels could be gained in such a fratricidal war as raged in Kansas he had them on his brow. Ossawatimie was given to him, and added to his name by the insanity of the crazy crew of the North, as Napoleon conferred the names of battle fields on his favorite marshals. The action of Black Jack, too, gave him consideration, circumstance, and condition with philanthropists of bastard quality, carpet-knight heroes in Boston, and servile followers of fanaticism throughout the country. His courage is now lauded to the skies by men who have none of it themselves. This virtue, I admit, he has—linked, however, with a thousand crimes. An iron will, with which to accomplish evil under the skillful guise of good, I also admit to be in his possession—rendering his influence over the young all the more despotic and dangerous. Imagine, if you please, the bark on which this young man at the bar and all his hopes were freighted, laid alongside of the old weather-beaten and murderous man-of-war whose character I have placed before you. The one was stern and bent upon a fatal voyage. Grim-visaged war, civil commotion, pillage and death, disunion and universal desolation thronged through the mind of John Brown. To him law was nothing, the Union was nothing, the peace and welfare of the country were nothing, the lives of the citizens of Virginia were nothing. Though a red sea of blood rolled

before him, yet he lifted up his hand and cried "Forward." Shall he now shrink from his prominence and attempt to shrivel back to the grade of his recruits and subalterns? Shall he deny his bad pre-eminence and say that he did not incite the revolt which has involved his followers in ruin? Shall he stand before this Court and before the country and deny that he was the master-spirit, and gathered together the young men who followed him to the death in this mad expedition? No! his own hand signs himself "Commander-in-Chief," and shows the proper distinction which should be made between himself and the men who, in an evil moment, obeyed his orders. Now turn to the contrast again and behold the prisoner. Young, and new to the rough ways of life, his unsandaled foot tender and unused to the journey before him, a waif on the ocean, at the mercy of the current which might assail him, and unfortunately endowed with that fearful gift which causes one to walk as in a dream through all the vicissitudes of a lifetime; severed and wandering from the sustaining and protecting ties of kindred, he gave, without knowing his destination or purpose, a pledge of military obedience to John Brown, "Commander-in-Chief."

Gentlemen of the Jury, there is one character which, in the economy of God's Providence, has been placed upon the earth, but perhaps has never been fully drawn, and is most difficult to draw. It is the character of him who glides down the stream of life in a trance, dreams as he floats along, and sees visions on either shore. Realities exist in this world, no doubt. Practical views are certainly the best. But that impalpable, airy, and unsubstantial creations of the busy imaginations come now and then, and lure the children of men to chase the "Will-o'-the-Wisp" over the dangerous morass of life, is as true as that we have our allotted pilgrimage of three score years and ten. Who has not beheld the young man of strict moral culture, impressed with high principles of right, and gifted with good intellect, start out upon the dusty and well-beaten highway, which millions have trod before him, only to turn aside at the first inviting grove of pleasure, the first call of some fanciful wood nymph, or to follow over the falls of

ruin and death some meandering stream whose beautiful surface caught his eye? To such a one right and wrong are utter abstractions, and have no relation whatever to things that exist. Give to such a mind a promise, however false, and from it will spring a castle in the air, with proportions as true and just as the most faultless architecture ever framed by mathematical skill.

Some lay the foundation of their actions on the rock, and are never overthrown. Some build upon the shifting sand, and fall when the storm comes. But in each instance the building may be the same in its symmetry. So with the deductions of the mind. All depends, not upon the reasoning, but upon the basis on which thought rests, and which supports the edifice of our conclusions. The enthusiast and visionary takes his standpoint and fixes the premises of his conduct from caprice and the circumstances which have obtained the ascendancy over his mind. That such has been the character and such the conduct of the prisoner, without one spark of malignity of heart, or a single impulse of depravity, all the evidence in this case clearly establishes. Some general ideas, gilded over by the alluring title of freedom, were held out to him by Brown, and formed the basis of what seemed to him duty and honor. If ever man charged with crime was lifted up by the evidence of his case above the ignoble traits of the ordinary felon, the prisoner is thus distinguished. Instead of the eager and willing bandit, anxious to join a hoary leader bent on mischief—instead of the outlaw in mind and character, gloomily and fiercely pondering revenge against his fellow-men for fancied or real injuries—we see from the evidence a kind though wayward heart, a cheerful, obliging, though visionary mind. With children everywhere he has been a favorite; and since little children crept upon the knee of the Savior eighteen hundred years ago, they have been the most infallible judges of a gentle and affectionate heart. Amiability and sweetness of temper he has carried with him through the world, and he brings that trait now here before you to show that strong inducements and powerful incentives must have been brought to bear in order to engage him in an enterprise

so desperate as that for which his life is now so sadly imperiled. What motive controlled him to this action? A crime without a motive cannot exist. Was it the motive of bloodshed? His character forbids the thought. Was it the motive of disloyalty to a government cemented by the blood of his ancestors, and defended by all who are near him by the ties of kindred? Not a syllable of proof warrants such a conclusion. Was his motive robbery and unholy gain? Other fields are more inviting to the land pirate; but the thought of plunder never crossed a mind like his. One answer, and one alone, is to be given to all these questions. John Brown was the despotic leader, and John E. Cook was an ill-fated follower of an enterprise whose horror he now realizes and deplores. I defy the man, here or elsewhere, who has ever known John E. Cook, who ever looked once fully into his face, and learned anything of his history, to lay his hand on his heart and say that he believes him guilty of the origin or the results of the outbreak at Harper's Ferry.

Here, then, are the two characters whom you are thinking to punish alike. Can it be that a jury of Christian men will find no discrimination should be made between them? Are the tempter and the tempted the same in your eyes? Is the beguiled youth to die the same as the old offender who has pondered his crime for thirty years? Are there no grades in your estimation of guilt? Is each one, without respect to age or circumstance, to be beaten with the same number of stripes? Such is not the law, human or divine. We are all to be rewarded according to our works, whether in punishment for evil, or blessings for good that we have done. You are here to do justice, and if justice requires the same fate to befall Cook that befalls Brown, I know nothing of her rules, and do not care to learn. They are as widely asunder in all that constitutes guilt as the poles of the earth, and should be dealt with accordingly. It is in your power to do so, and by the principles by which you yourselves are willing to be judged hereafter, I implore you to do it!

Come with me, however, gentlemen, and let us approach the spot where the tragedy of the 17th of October occurred,

and analyze the conduct of the prisoner there. It is not true that he came as a citizen of your State and gained a home in your midst to betray you. He was ordered to take his position at Harper's Ferry, in advance of his party, for the sole purpose of ascertaining whether Col. Forbes of New York had divulged the plan. This order came from John Brown, the "Commander-in-Chief," and was doubtless a matter of as much interest to others of prominent station as to himself. Cook simply obeyed—no more. There is not a particle of evidence that he tampered with your slaves during his temporary residence. On the contrary, it is admitted on all hands that he did not. His position there is well-defined. Nor was he from under the cold, stern eye of his leader. From the top of the mountain his chief looked down upon him, and held him as within a charmed circle. Would Cook have lived a day had he tried to break the meshes which environed him? Happy the hour in which he had made the attempt, even had he perished; but, in fixing the measure of his guilt, the circumstances by which he was surrounded must all be weighed. At every step we see him as the instrument in the hands of other men, and not as originating or advising anything. His conduct towards that elegant and excellent gentleman, Col. Washington, is a matter of sore regret to his friends and also to himself. It is the one act most difficult of all others to reconcile with the well-known character of the man. But even there his offense is palliated by the dictatorship which governed him. At first glance, we see a high-toned gentleman's hospitality abused. This has been used to aggravate his acknowledged offenses. But the truth is, that when Cook first visited Colonel Washington's house and received from him various acts of kindness, the thought that soon he was to be ordered back over that threshold in a hostile manner had never entered his brain.

The act was not Cook's but Brown's. The mere soldier is never punished for the outrages of his commander. And when you allow that the prisoner's great error was his enlistment under the leadership of Brown in the first place, then you must admit that everything else has followed in logical

sequence. Obedience and fidelity upon a leader in a false and pernicious cause are entitled to offset, in some measure at least, the evil that has flown from them. But the prisoner took certain weapons hallowed by great and sacred associations from the possession of Col. Washington. Ah! in this he is once more consistent with the visionary and dreamy cast of his mind. The act was not plunder, for he pledged their safe return to their owner, and has faithfully kept that pledge to the full extent of his power. But his wayward fancy was caught with the idea that a spell of enchantment hung around them, and that, like the relics of a saint, they would bless and prosper any cause in which they were invoked. The sword of Frederick the Great and the pistols of Lafayette linked to the name and family of Washington! With what a charm such associations would strike the poetic temperament of a young enthusiast, embarked in an enterprise presenting to his perverted imagination the incentives of danger and glory; and if a new order of things was to be inaugurated, and storm and revolution were to shake the country and the world, like the heart of the Bruce or the eagles of Napoleon, these warlike incentives of heroes were to fascinate and allure followers, and hallow the battles in which they were lifted. The mind of the prisoner is fully capable of dreaming such dreams and nursing such visions.

But it is said that Cook left the scene at Harper's Ferry at an early hour to avoid the danger of the occasion, and thus broke faith with his comrades in wrong. Even this is wholly untrue. Again we find the faithful, obedient subaltern carrying out the orders of his chief, and when he had crossed the river and fulfilled the commands of Brown, he did what Brown's own son would not do—by returning and exposing himself to the fire of the soldiers and citizens for the relief of Brown and his party. We see much, alas! too much, to condemn in his conduct, but nothing to despise; we look in vain for an act that belongs to base or malignant nature. Let the hand of chastisement fall gently on the errors of such as him, and reserve your heavy blows for such as commit crime from motives of depravity. Up to this point I have followed

the prisoner, and traced his immediate connection with this sad affair. You have everything before you. You have heard his own account of his strange and infatuated wanderings up and down the earth with John Brown and his coadjutors; how like a fiction it all seems, and yet how lamentably true; how unreal to minds like ours; how like the fever-dream of a mind warped and disordered to the borders of insanity does the part which the prisoner has played seem to every practical judgment! Is there nothing in it at all that affords you the dearest privilege which man has on earth—the privilege of being merciful? Why, the very thief on the cross, for a single moment's repentance over his crimes, received absolute forgiveness and was rewarded with paradise. But, gentlemen, in estimating the magnitude of this young man's guilt, there is one fact which is proven in his behalf by the current history of the day which you cannot fail to consider. Shall John E. Cook perish, and the real criminals, who, for twenty years, have taught the principles on which he acted, hear no voice from this spot? Shall no mark be placed on them? Shall this occasion pass away, and the prime felons who attacked your soil and murdered your citizens at Harper's Ferry escape? The indictment before us says that the prisoner was seduced by the false and malignant counsels of other traitorous persons. Never was a sentence written more just and true. "False and malignant counsels" have been dropping for years, as deadly and blighting as the poison of the Bohun Upas tree, from the tongues of evil and traitorous persons in that section of the Union to which the prisoner belongs. They have seduced, not only his mind, but many others, honest and misguided like him, to regard the crime at Harper's Ferry, as no crime, your right as unmitigated wrongs, and the Constitution of the country as a league with hell and a covenant with death. On the skirts of the leaders of abolition fanaticism in the North is every drop of blood shed in the conflict at Harper's Ferry! on their souls rests the crime of murder for every life there lost; and all the waters of the ocean could not wash the stains of slaughter from their treacherous and guilty hands. A noted Boston abolitionist (Wen-

dell Philips) a few days ago, at Brooklyn, New York, in the presence of thousands, speaking of this tragic occurrence, said: "It is the natural result of anti-slavery teaching. For one, I accept it. I expected it." I, too, accept it in the same light, and so will the country. Those who taught, and not those who believed and acted, are the men of crime in the sight of God. And to guard other young men, so far as in my power, from the fatal snare, which has been tightened around the hopes and destiny of John E. Cook, and to show who are fully responsible for his conduct, I intend to link with this trial the names of wiser and older men than he; and if he is to be punished and consigned to a wretched doom, they shall stand beside him in the public stocks; they shall be pilloried forever in public shame as the evil and traitorous persons who seduced him to his ruin by their false and malignant counsels.

The chief of these men, the leader of a great party, a Senator of long standing, has announced to the country that there is a higher law than the Constitution, which guarantees to each man the full exercise of his own inclination. The prisoner before you has simply acted on the law of William H. Seward, and not the law of his fathers. He has followed the Mahomet of an incendiary faith. Come forth, ye sages of abolitionism, who now cower and skulk under hasty denials of your complicity with the bloody result of your wicked and unholy doctrines, and take your places on the witness stand. Tell the world why this thing has happened. Tell this jury why they are trying John E. Cook for his life. You advised his conduct, and taught him that he was doing right. You taught him a higher law, and then pointed out to him the field of action. Let facts be submitted. Mr. Seward, in speaking of slavery, says: "It can and must be abolished, and you and I must do it." What worse did the prisoner attempt? Again he said, upon the same subject, "Circumstances determine possibilities;" and doubtless the circumstances with which John Brown had connected his plans, made them possible in his estimation; for it is in evidence before the country, unimpeached and uncontradicted, that the great Senator of New

York had the whole matter submitted to him, and only whispered back, in response, that he had better not been told. He has boldly announced an irrepressible conflict between the free and slave States of this Union. These seditious phrases, "higher law" and "irrepressible conflict," warrant and invite the construction which the prisoner and his young, deluded companions placed upon them. Yet they are either in chains, with the frightful gibbet in full view, or sleep in dishonored graves, while the apostle and master-spirit of insurrection is loaded with honors and fares sumptuously every day. Such is poor, short-handed justice in this world.

An old man, and for long years a member of the National Congress from Ohio, next shall testify here before you that he taught the prisoner the terrible error which now involves his life. Servile insurrections have forever been on the tongue and lips of Joshua R. Giddings. He says, "that when the contest shall come, when the thunder shall roll and the lightning flash, and when the slaves shall rise in the South in imitation of the horrid scenes of the West Indies, when the Southern man shall turn pale and tremble, when your dwellings shall smoke with the torch of the incendiary, and dismay sit on each countenance, he will hail it as the approaching dawn of that political and moral millenium which he is well assured will come upon the world." The atrocity of these sentiments chills the blood of honest patriots, and no part of the prisoners equals their bloody import. Shall the old leader escape and the young follower die? Shall the teacher, whose doctrines told the prisoner that what he did was right, go unscathed of the lightning which he has unchained? If so, Justice has fled from her temples on earth, and awaits us only on high to measure out what is right between man and man. The men who have misled this boy to his ruin shall here receive my maledictions. They shrink back from him now in the hour of his calamity. They lift up their hands and say, Amen! to the bloody spectacle which their infernal orgies have summoned up. You hear them all over the land ejaculating, through false, pale, coward lips, "Thou canst not say I did it," when their hands are reeking with all the blood that has been

shed and which yet awaits the extreme penalty of the law. False, fleeting, perjured traitors; false to those who have acted upon your principles; false to friends, as well as country, and perjured before the Constitution of the Republic—ministers who profess to be of God, who told this boy here to carry a Sharp's rifle to Kansas, instead of his mother's Bible—shall this jury, this court, and this country forget their guilt and their infamy, because a victim to their precepts is yielding up his life before you? May God forget me, if I here, in the presence of this pale face, forget to denounce with the withering, blighting, blasting power of majestic truth, the tall and stately criminals of the Northern States of this Union.

The visionary mind of the prisoner heard from a member of Congress from Massachusetts, that a new Constitution, a new Bible and a new God were to be inaugurated, and to possess the country. They were to be new, because they were to be anti-slavery; for the old Constitution, and the old Bible, and the God of our fathers, the ancient Lord God of Israel, the same yesterday, today, and forever, were not on the side of abolitionism. Is there no mitigation for his doom in the fact, that he took his life in his hand, and aimed at that which a coward taught him, but dared not himself attempt? Base, pusillanimous demagogues have led the prisoner to the bar; but while he suffers—if suffer he must—they, too, shall have their recreant limbs broken on the wheel. I will not leave the soil of Virginia, I will not let this awful occasion pass into history, without giving a voice and an utterance to its true purport and meaning, without heaping upon its authors the load of execration which they are to bear henceforth and forever. Day after day, and year after year, has the baleful simoon of revolution, anarchy, discord, hostility to the South and her institutions, swept over that section of the country in which the lot of the prisoner has been cast. That he has been poisoned by its breath, should not cut him off from human sympathy; rather should it render every heart element toward him. He never sought place or station, but sought merely to develop those doctrines which evil and traitorous persons had caused him to believe were true. Ministers, editors and poli-

ticians—Beecher, Parker, Seward, Giddings, Sumner, Hale, and a host of lesser lights of each class—who in this courtroom, who in this vast country, who in the wide world who shall read this trial, believes them not guilty, as charged in the indictment in all the counts, to a deeper and far more fearful extent than John E. Cook? Midnight gloom is not more sombre in contrast with the blazing light of the meridian sun than is the guilt of such men in comparison with that which overwhelms the prisoner. They put in motion the maelstrom which has engulfed him. They started the torrent which has borne him over the precipice. They called forth from the caverns the tempest which wrecked him on a sunken reef. Before God, and in the light of Eternal truth, the disaster at Harper's Ferry is their act, and not his. May the ghost of each victim to their doctrines of disunion and abomination sit heavy on their guilty souls! May the fate of the prisoner, whatever it may be, disturb their slumbers and paralyze their arms when they are again raised against the peace of the country and the lives of its citizens!

I know by the gleam of each eye into which I look in this jury box, that if these men could change places with young Cook, you would gladly say to him, "Go, erring and repentant youth, our vengeance shall fall on those who paid their money, urged on the attack, and guided the blow." Let me appeal to you, gentlemen of the jury, in the name of Eternal truth and everlasting right, is nothing to be forgiven to youth, to inexperience—to a gentle, kind heart—to a wayward and peculiar, though not vicious character—strangely apt to be led by present influences? I have shown you what those influences, generally and specially, have been over the mind of the prisoner. I have shown you the malign influence of his direct leader. I have shown you, also, the "false and malignant counsels" in behalf of this sad enterprise, emanating from those in place, power and position. It might have been your prodigal son borne away and seduced by such counsels, as well as my young client. Do with him as you would have your own child dealt by under like circumstances. He has been stolen from the principles of his ancestors, and betrayed from the

teachings of his kindred. If he was your own handsome child, repentant and confessing his wrong to his country, what would you wish a jury of strangers to do? That do yourselves. By that rule guide your verdict; and the poor boon of mercy will not be cut off from him.

He thought the country was about to be convulsed; that the slave was pining for an opportunity to rise against his master; that two-thirds of the laboring population of the country, North and South, would flock to the standard of revolt; that a single day would bring ten, fifty—yea, a hundred thousand men—to arms in behalf of the insurrection of the slaves. This is in evidence. Who are responsible for such terribly false views? and what kind of a visionary and dreamy mind which has so fatally entertained them? That the prisoner's mind is pliant to the impressions, whether for good or for evil, by which it is surrounded, let his first interview in prison with Gov. Willard, in the presence of your Senator, Col. Mason, bear witness. His error was placed before him. His wrong to his family and his country was drawn by a patriotic, and, at the same time, an affectionate hand. His natural being at once asserted its sway. The influence of good, and not of evil, once more controlled him as in the days of his childhood; and now here, before you, he has the merit, at least, of a loyal citizen making all the atonement in his power for the wrong which he has committed. That he has told strictly the truth in this statement, is proven by every word of evidence in this cause.

Gentlemen, you have this case. I surrender into your hands the issues of life and death. As long as you live, a more important case than this you will never be called to try. Consider it, therefore, well in all its bearings. I have tried to show you those facts which go to palliate the conduct of the prisoner. Shall I go home, and say that in justice you remembered not mercy to him? Leave the door of clemency open; do not shut it by a wholesale conviction. Remember that life is an awful and a sacred thing; remember that death is terrible—terrible at any time, and in any form.

“Come to the Bridal Chamber, Death—
Come when the mother feels,
For the first time, her first-born’s breath;
Come when the blessed seals
That close the pestilence are broke,
And crowded cities wail its stroke;
Come in Consumption’s ghastly form,
The Earthquake’s shock, the Ocean’s storm;
Come when the heart beats high and warm
With banquet song, and dance and wine,
And thou art terrible. The groan,
The knell, the pall, the bier,
And all we know, or dream, or fear
Of agony are thine.”

But when to the frightful mien of the grim monster, when to the chill visage of the spirit of the glass and scythe, is added the hated, dreaded spectre of the gibbet, we turn shuddering from the accumulated horror. God spare this boy, and those who love him, from such a scene of woe.

I part from you now, and most likely forever. When we next meet—when I next look upon your faces and you on mine—it will be in that land and before that Tribunal where the only plea that will save you or I from a worse fate than awaits the prisoner, will be mercy. Charity is the paramount virtue; all else is as sounding brass and a tinkling cymbal. Charity suffereth long, and is kind. Forbid it not to come into your deliberations; and, when your last hour comes, the memory that you allowed it to plead for your erring brother, John E. Cook, will brighten your passage over the dark river, and rise by your side as an interceding angel in that day when your trial, as well as his, shall be determined by a just but merciful God.

I thank the Court, and you, gentlemen, for your patient kindness, and I am done.

Mr. Hunter followed in a speech of some length.

The *Jury* retired and in a few minutes returned with a verdict of *Guilty*.

THE SENTENCES.

November 10.

The prisoners, *Coppoc*, *Cook*, *Green* and *Copeland*, were brought into Court today for sentence. They were severally asked by JUDGE PARKER if they had anything to say.

Coppoc. The charges that have been made against me are not true. I never committed any treason against the State of Virginia. I never made war upon it. I never conspired with anybody to induce your slaves to rebel, and I never even exchanged a word with one of your servants. What I came here for, I always told you. It was to run off slaves into a free State and liberate them there. This is an offense against your laws, I admit, but I never committed murder. When I escaped to the engine house and found the captain and his prisoners surrounded there, I saw no way of deliverance but by fighting a little. If anybody was killed on that occasion it was in a fair fight. I have, as I have said, committed an offense against your laws, but the punishment for that offense would be very different from what you are going to inflict on me now. I have no more to say.

Cook, in a nervous and hesitating manner, made a speech which had probably been carefully prepared. He said in substance, that he had not come to commit treason or murder, but merely in pursuance of orders from his commander-in-chief, with a design to liberate slaves. As to the sword and pistols of George Washington, taken from Lewis Washington's house, he said they were seized by order of Brown, not for purposes of robbery, but for the sake of the moral effect that their possession might afford in case of a war of liberation.

The *two negroes* said nothing.

JUDGE PARKER sentenced *Green* and *Copeland* to be hanged on December 16th, between the hours of 8 and 12, and *Coppoc* and *Cook* to be hanged on the same day between the hours of 12 and 5.

Gov. Wise was inclined to spare *Coppoc's* life, and he might have escaped the scaffold had there not appeared in the New York Tribune a letter from him to Mrs. John Brown, telling her of the death of her sons, in which he spoke of the people of Harper's Ferry as "the enemy."¹³ This sealed his fate, though he would probably

¹³ Charlestown Jail, Va., Nov., 1859.

Mrs. John Brown—Dear Madam: I was very sorry that your request to see the rest of the prisoners was not complied with. Mrs.

have been hanged notwithstanding, as the evidence was undisputed that he was the murderer of Mayor Beckham.

Cook and Coppoc all but escaped the night before their deaths. Despite the watchfulness of Andrew Hunter and the military commanders in Charlestown, one of the men enrolled for service in the prison guards soon after the raid, was Charles Lenhart, the Kansas Free State fighter, whose sole motive for this service was a desire to succor the raiders. It was easy for him to get into touch with them, and from him Cook and Coppoc learned that on the night of December 14, 1859, he would be on duty at the angle of the prison wall most favorable for an escape. They had borrowed a knife from a prison guard and forgotten to return it; taken a screw out of the bedstead, and obtained a knife blade from Shields Green. With these slight implements they had worked a whole week and made an aperture in the wall which they were able to conceal during the day. With the knife blade they made teeth in the knife, and with this roughly improvised saw cut off their shackles. Their cell being on the first floor, there was a drop of not over five feet to the prison yard. Once there, only a fifteen-foot brick wall was between them and freedom.

On the appointed night, Lenhart was on guard and everything in readiness. But anxiously as he walked his post those long wintry

Avis brought me a book, whose pages are full of truth and beauty, entitled "Voices of the True-Hearted," which she told me was a present from you. For this dear token of remembrance, please accept my many thanks.

My comrade, J. E. Cook, and myself, deeply sympathize with you in your sad bereavement. We were both acquainted with Anna and Martha. They were to us as sisters, and as brothers we sympathize with them in the dark hour of trial and affliction.

I was with your sons when they fell. Oliver lived but a very few moments after he was shot. He spoke no word, but yielded calmly to his fate. Watson was shot at 10 o'clock on Monday morning, and died about 3 o'clock on Wednesday morning. He suffered much. Though mortally wounded at 10 o'clock, yet at 3 o'clock Monday afternoon he fought bravely against the men who charged on us. When the enemy were repulsed, and the excitement of the charge was over, he began to sink rapidly.

After we were taken prisoners, he was placed in the guard house with me. He complained of the hardness of the bench on which he was lying. I begged hard for a bed for him, or even a blanket, but could obtain none for him. I took off my coat and placed it under him, and held his head in my lap, in which position he died, without a groan or struggle.

I have stated these facts, thinking that they may afford to you, and to the bereaved widows they have left, a mournful consolation.

Give my love to Anna and Martha, with our last farewell.

Yours, truly,

Edwin Coppoc.

hours, not a sound came to his longing ears before the arrival of his relief sent him back to his quarters. A fatal consideration for his brother-in-law, the then Governor Willard, of Indiana, and his sister, Mrs. Willard, who were in town to bid him farewell, but were to leave the next day, induced Cook to postpone the attempt lest the escape reflect upon them. He was generous enough to urge Coppoe to go alone, but Coppoe was not of that stuff. Not even the thought of his grief-stricken Quaker mother in the quiet village of Springdale, to which his brother Barclay had now safely returned, would induce him to abandon his comrade. On July 25 of the same year, Barclay Coppoe had said to his mother, after getting a letter from John Brown: "We are going to start for Ohio today." "Ohio!" said his mother, "I believe you are going with old Brown. When you get the halters around your necks, will you think of me?" The halter was fairly around Edwin's neck now, but nothing could induce him to deprive Cook of his chance for life by going out alone.

On the next night, Coppoe removed his chains and crawled out first, Cook following. To their joy they found no one in the prison yard. Fortunately, the timbers of the scaffold upon which Brown had perished, and upon which they were to die, were still in the yard, and gave them an easy means of arriving at the top of the wall. Alas for their high hopes! A loyal soldier of Virginia stood where Lenhart was to have been, and the instant Cook appeared upon the wall, the guard shot at him. Both men tried to jump down, but the sentry threatened to bayonet them if they did, and so, sadly enough, they walked back into the jail and delivered themselves up to the astonished Captain Avis and his guards.¹⁴

December 16.

THE EXECUTIONS.

The execution of Coppoe and Cook and of the negroes Green and Copeland took place today on the field where John Brown was hanged. There was a large military force present and a great concourse of spectators.

At a quarter to 11 the negroes, accompanied by Sheriff Campbell and Rev. Mr. North, appeared at the jail door, and with their arms pinioned, moved towards the vehicle in waiting for them. They seemed downcast, and wore none of that calm and cheerful spirit evinced by Brown under similar circumstances. They were helped into the wagon and took their seats on their coffins without scarcely looking to the right or left. The wagon was closely flanked on either side by a company of riflemen marching in double fire, lock step.

At 11 o'clock the procession entered the field occupied by the military. In two minutes more the wagon stopped at the foot of the gallows, and while the prisoners were alighting the companies forming the escort moved off to the position assigned them on the field.

¹⁴ Villard, p. 570.

The prisoners mounted the scaffold with a firm step, and were immediately joined by the Sheriff. After a brief prayer by the clergyman the caps were drawn over their heads and the ropes affixed around their necks. During the few moments they thus stood, Copeland remained quiet, but Green was engaged in earnest prayer up to the time the trap was drawn.

Green died very easy, his neck being broken by the fall. The motion of his body was very slight. Copeland seemed to suffer very much, and his body writhed in violent contortions for several minutes. The bodies were placed in poplar coffins, and carried back to jail.

The bodies of the negroes having been brought back to the jail, at about noon, notice was given to Cook and Coppoc that their time was approaching—only one hour more being allowed them. The military movements, similar to those at the first execution, were repeated; and the wagon, with two more coffins, was standing at the door at half-past 12. The same military escort was in readiness while the religious ceremonies were progressing in the cell. Since the failure of their attempt to escape of the previous night they now looked at their fate as certain. They were reserved and rather quiet but fervently joined in the religious service.

When called upon by the Sheriff, they stood calmly and quietly while their arms were being pinioned, and after bidding farewell to the guards at the jail, were helped into the wagon and took their seats on their coffins. Their appearance was rather that of hopeless despair than of resignation, and they seemed but to take little notice of anything as the procession slowly moved into the field of death. The wagon reached the scaffold at 13 minutes before 1 o'clock, and the prisoners ascended the scaffold with a determined firmness that was scarcely surpassed by John Brown. A brief prayer was offered up by one of the clergymen, the rope was adjusted, the cap drawn, and both were launched into eternity, in seven minutes after they ascended the gallows. They both exhibited the most unflinching firmness, saying nothing, with the exception of bidding farewell to the minister and sheriff. After the rope was adjusted, Cook exclaimed, "Be quick—as quick as possible," which was also repeated by Coppoc. After hanging for about half an hour, both bodies were taken down and placed in black walnut coffins, prepared for them, and that evening sent by express to their relatives in the North.

STEVENS AND HAZLETT.

There were two more of the captured raiders still in prison, and at the next February terms but before another Judge, their cases were disposed of. Stevens,^{14a} who was captured

^{14a} AARON DWIGHT STEVENS ran away from home at the age of 16, in 1847, and enlisted in a Massachusetts volunteer regiment, in which he served in Mexico during the Mexican war. Later he enlisted in

with John Brown, was indicted with him but was too badly wounded to be tried then,¹⁵ and there was a subsequent delay caused by a desire to have one of the cases come before a Federal Court.¹⁶

In the confusion, the detail at the arsenal, Hazlett¹⁷ and O. P. Anderson, the negro, abandoned their post as soon as they saw that the move was a failure, went to the Kennedy farm,

Company F of the First United States Dragoons, and was tried for "mutiny, engaging in a drunken riot and assaulting Major George A. H. Blake, of his regiment," at Taos, New Mexico, in May, 1855. Stevens was sentenced to death, but this was commuted by President Pierce to imprisonment for three years at hard labor at Fort Leavenworth, from which post he escaped and joined the Free State forces. In these he became Colonel of the Second Kansas Militia, under the name of Whipple. Thereafter his story is intertwined with that of John Brown. Stevens came of old Puritan stock, his great-grandfather having been a Captain in the Revolutionary army. He was a man of superb bravery and of wonderful physique; he was well over six feet, was blessed with a great sense of humor, and was sustained at the end by his belief in spiritualism. See Villard, p. 680. Col. Washington said of Stevens: In the engine house I heard Stevens talking to a young man, one of our people, whom he had captured. He asked him what his view was with reference to slavery. The young man answered: "Of course, being born South, my views are with the South on that subject." Stevens asked him if he were a slaveowner. He said he was not. "Well," said Stevens with an oath, "You would be the first fellow I would hang, for you defend a cause not to protect your own interest in doing so." Mason Committee, p. 36.

¹⁵ "At the conclusion of Brown's trial Stevens and his counsel urgently insisted that his trial should be proceeded with, but I refused their request, as, in my opinion, he was wholly unfitted from his many wounds to take any part about his own defense. He had been brought into court lying on a stretcher, which was placed upon the floor, and such was his condition that he could not raise his head so as to even see the witnesses produced against him. His trial therefore was not entered upon until the following month of February, and then before another Judge." Judge Parker's "Recollections." *Ante*, p. 710.

¹⁶ *Ante*, p. 817.

¹⁷ ALBERT HAZLETT was born in Pennsylvania in 1837. George B. Gill says: "I was acquainted with Hazlett well enough in Kansas, yet after all knew but little of him. He was with Montgomery considerably, and was with Stevens on the raid in which Cruise was killed. He was a good-sized, fine-looking fellow, overflowing with good nature and social feelings. . . . Brown got acquainted with him

where they got a supply of provisions, and from there they made their way into Pennsylvania. Five days later Hazlett was captured at Carlisle, Pa., taken back to Virginia under extradition papers and tried and convicted.

On March 16, 1860, *Stevens* and *Hazlett* perished on the scaffold.

just before leaving Kansas." Before the raid he worked on his brother's farm in Western Pennsylvania, joining the others at Kennedy farm in the early part of September, 1859. To Mrs. Rebecca Spring he wrote on March 15, 1860, the eve of his execution: "Your letter gave me great comfort to know that my body would be taken from this land of chains. . . . I am willing to die in the cause of liberty, if I had ten thousand lives I would willingly lay them all down for the same cause." He was arrested in Carlisle, Pennsylvania, under the name of William Harrison, and on October 22, extradited to Virginia. Villard, p. 682.

THE TRIAL OF DAVID D. HOW FOR THE MUR-
DER OF OTHELLO CHURCH. ANGELICA,
NEW YORK, 1824.

THE NARRATIVE.

Othello Church, a New York farmer, was called out of his bed at one o'clock in the morning by a person who said he had a letter for him, and as he opened the door, was shot dead on the spot. How, a neighbor, was tried for his murder, but there was no witness to the deed, and all the evidence was circumstantial. But the following chain of events persuaded the jury to find him guilty: 1st. He had frequently complained of Church's conduct to him in defrauding him of his property, etc. 2nd. He had used threats against Church to a number of people. 3rd. He had endeavored to persuade a person to assist him to put Church out of the way. 4th. He had threatened to shoot Church. 5th. He was lurking near Church's home a few evenings before the murder with his rifle and endeavoring to conceal it. 6th. He left the village the same evening, and in time to have committed the murder. 7th. He had something under his coat, exhibiting the appearance of a rifle. 8th. His suspicious conduct on the evening of the murder. 9th. In the morning, the horse upon which he rode on the evening of the murder was found wet with sweat. 10th. His false statements about his horse being sick. 11th. The ball that killed Church matched the one found in How's rifle box. 12th. Lint and horse hair were found adhering to the rifle. 13th. Patch and tow wadding were found near where Church lay.

The jury's conclusion was amply confirmed, for How, before he was hanged, made a confession that he was the murderer.

THE TRIAL.¹

In the Circuit Court (Oyer and Terminer) of Alleghany County (Angelica), New York, February, 1824.

HON. WILLIAM B. ROCHESTER,² *Circuit Judge.*³

February 4.

On Tuesday, February 3rd, the *Prisoner* was arraigned on an indictment for the murder of Othello Church, to which he pleaded *Not Guilty*. On being asked if he was ready for trial, he answered in the negative, as he had not sufficient counsel, and was unable to employ others. The COURT informed him that if he had any choice in counsel he could then make his election.

The *Prisoner* requested that Fletcher M. Haight and Felix Tracy might be assigned him to assist Alvin Burr, which was accordingly done. The *Prisoner* was informed that the next morning his case would be called.

Samuel S. Haight,⁴ *Daniel Cruger*⁵ and *John C. Spencer*⁶ for the People.

¹ Wheeler's Criminal Cases. See 1 Am. St. Tr.

² ROCHESTER, WILLIAM BEATTY. Born Washington County, Md. Received a liberal education, studied law and began practice at Bath, N. Y. Member New York Assembly (Alleghany and Steuben Counties), 1816-1818. Presidential Elector, 1820. Member of U. S. Congress, but resigned in 1823 on being appointed Circuit Judge, which position he resigned in 1826 on his appointment to the Congress of Panama. Was a candidate for Governor of New York against DeWitt Clinton, but was defeated by a small majority (Clinton 99,785, Rochester 96,133). Being appointed to the Presidency of the United States Branch Bank at Buffalo, he removed to that place from Rochester where he had resided for some years. He was Charge d'Affaires of Central America 1827 to 1833. He was lost at sea in the wreck of the steamer Pulaski off the coast of North Carolina, June 15, 1838.

³ With Judge Rochester there sat: John Griffin, Vial Thomas, Sylvanus Merriam, Clark Crandall and Thomas Dale, Judges of Alleghany Common Pleas.

⁴ HAIGHT, SAMUEL S. (1778-1863.) Born Athens, N. Y. Studied law with his father in Newtown, now Elmira, N. Y., and removed

Fletcher M. Haight,⁷ *Alvin Burr*⁸ and *Felix Tracy*⁹ for the Prisoner.

February 5.

At the time appointed today, the *Prisoner* was brought into court, and after several challenges, the following jurors were sworn: Daniel Scott, Isaac Smith, Amasa Hall, Peter Bacon,

soon after his marriage to Bath Steuben Co. Was Major General of New York volunteers when peace was declared at the close of the war of 1812. Removed to Angelica, 1818, where he practiced law and became a County Judge. Removed to Rochester in 1833 and six years later returned to Allegheny County (Cuba) where he died. See Hoyt's Genealogical History of Hoyt, Haight and Hight Families, 1871.

⁵ CRUGER, DANIEL. (1780-1843.) Born Sunbury, Pa. Established 1800 at Union, N. Y., the first newspaper published in that part of the state, *The American Constellation*. In 1803 removed to Owego and changed name of his paper to *The American Farmer*. Sold it in 1805, and went to Bath, where he studied law with Gen. S. S. Haight, and was admitted to bar. Served in War of 1812 as major of infantry. Represented Allegheny County in the Assembly, 1814, 1815, 1816; was Speaker in 1816. District attorney 7th district, 1815-1818, and of Steuben County, 1821. Member 15th Congress, 1817-1819. Member State Assembly Steuben County, 1826. In 1833 removed to Wheeling, W. Va., where he died. See Roberts, Hist. Gazetteer of Steuben County, N. Y.; Gay, Hist. Gazetteer of Tioga County, N. Y.; Wingerter, Greater Wheeling and Vicinity, II, 143; Hist. Bench and Bar of N. Y.; Hake, Landmarks of Steuben County, N. Y.

⁶ See 1 Am. St. Tr. 532.

⁷ HAIGHT, FLETCHER MATHEWS. (1799-1866.) Eldest son of Samuel S. Haight and was born in Newtown, N. Y. Graduated Hamilton College and began practice at Bath. Removed to Rochester, 1824, and became eminent in his profession. Member of State Legislature, 1833. Removed to St. Louis in 1846 and to San Francisco in 1854. Here he practiced law in partnership with his eldest son, Henry H. Haight, afterwards Governor of California. In 1861 he was appointed by President Lincoln United States Judge for the Southern District of California which office he held until his death. See Hittell and Bancroft's Histories of California; Cutter Geneal. and Family List, Western New York; Towner, Our County (Chemung) and Its People.

⁸ BURR, ALVIN. Member of New York Assembly for Allegheny Co., 58th session, 1835.

⁹ TRACY, FELIX. Representative from Livingston Co., in New York Assembly, 50th session, 1827.

William Rose, Luke Maxon, George G. Patterson, Joseph Haynes, Ephraim Rowley, Joseph H. Root, Simon Williams, Horace Whitney.

Samuel S. Haight opened the cause on the part of the People.

THE WITNESSES FOR THE PEOPLE.

Abraham Aldrich. The notes shown were executed by the prisoner, Othello Church (the deceased,) Luther Adams and myself, one for \$475 and the other for \$50, dated Dec. 23, 1822; they were given to raise money for prisoner.

John Ayers. Saw Othello Church last fall after wheat was harvested, which was raised by How, take possession of it and exercise over it acts of ownership.

Stephen Smith. Reside at the Dautrement farm. How afterwards told me that Church had all the property on the Dautrement place—had full scope, and hoped he would be satisfied. This conversation was last fall after How was liberated from the jail limits. Does not know but this conversation was before How was confined.

Alexander Dautrement. In September How told me he was going to settle with Mr. Church—he and Church had a conversation; they appeared to be irritated, and could not agree on settlement. Some time after, perhaps November, asked How if he had settled with Mr. Church, and How replied that he expected it would be settled. Last time I spoke to How he said Church was damned foolish, and did not do as he wanted him to do. How did not appear to be irritated. A few days before Mr. Church was killed, How said he could not

settle with Mr. Church. Once How said that Mr. Church, Mr. Wilson, Col. Hull and Mr. Palmer had leagued together to ruin him, and he would have revenge out of some of them. This was a few days before Mr. Church's death. How reckoned that these four had combined to ruin him. This conversation took place in reference to Church's having his property as security, and to his complaints against the others. He complained that Church was hauling away his grain.

Cross-examined. This conversation was at my house; he mentioned the names of all those four persons. He said they had stripped him of his money and property; that he had the means of revenging himself, and if he could not one way he could in another. He said he had money and could buy judgments against these persons.

Mrs. Dautrement. About the middle of October How complained that the Sheriffs and Mr. Church had stripped him of everything—that they had got all his money, and now he was as bad off as ever. He mentioned Wilson and Palmer and Church and Aldrich, whom he thought as bad as any. When he first came home in September he said he had money and could buy judgments.

Adeline Dautrement. Do not

recollect anything but How abusing Mr. Hull very much; never heard him abuse Church.

Elijah Osgood. How and I had frequent conversations together; between the 10th and 15th of October, How said that Church had gotten his property pretty much in his own hands, and that he had been trying to make arrangements so as to get his property in his own hands. He said Church was a difficult man to get along with; though if he could get his property in his own hands, he could make such arrangements as to pay Davenport who held the demand against him in which Church was security.

David Crandall. The week before Church's death How said that if it had not been for his family he would have used powder and ball among the seven devil tribe; this was when talking of certain mills that were burnt, belonging to Mr. Palmer. Mr. Church's name and no other were mentioned.

Moses Thompson. Three or four weeks before Church's death, fell in company with How, who said some person was fetching grain from his place. He said he should be under the necessity of taking a musket to the damned rascals. This was in Angelica village. No names were mentioned.

Amos Freeman. Know prisoner. On 23rd December last he came to me on the Dautrement farm, where I had charge of Othello Church's property. How came just before daylight and invited me to a private interview in the barn. He took out a bottle of whiskey and said, if you

will be my friend I will tell you what we will do with Aldrich and Church. Replied I did not care much for Aldrich, but I would not do anything to Othello Church. How said poh! come take a good drink, for I have come to take a serious talk with you—take a drink and I will tell you. He then took me by the hand and asked me if I could swear eternal secrecy. I hesitated. How then asked me if I was a Mason. I answered no. How said you know what I mean, you can keep a secret. I promised How I would never divulge anything he would tell me. How then took me by the hand, and said, you swear. He then said that Aldrich and Othello were two of the greatest rascals he knew. How continued: Now I mean to have my revenge. He had previously said that revenge could not be got by fair means. Oh then, says How, Freeman it is worse than death. Spoke of Church's cattle and eating his corn and pumpkins and said he could not stand it; told me to keep the keys of the farm. Now, Freeman, says he, I will put a stop to this, and if you will befriend me I will put \$250 or \$300 in your way; said I would not be willing to injure Church for half the property on the farm. After another drink, How asked me if I thought Church his friend and doubted whether he knew how he talked about him. How spoke of the crops and the debt that Church had to pay out of it. How estimated the debt at \$500. Told How that Church had estimated it at \$900. He then said Church was a cursed villain, the greatest enemy he had, and

would go any length to injure him. How complained of Church taking away onions and straw. He then began to appear irritated and said I am determined on revenge and I will have it soon; and if you will be my friend you shall have half the property; asked him in what way he would go to work? How replied, Freeman, if you will be my friend, we will soon have old Othello out of the way and then there will be nobody to molest us. I then got up to go away; How took me by the hand and wanted me to stay. On going to the house, How said if I would hear him he would make a man of me. We then parted. Previous to this conversation with How, How asked me if I could keep a secret, and I replied that I could; same night How asked me if I did not think Church meant to keep all his property. This was three or four weeks before last conversation at Mr. Sherman's in the barroom alone—others in bed.

Cross-examined. How asked me if I had not kept an account of what was taken off the farm, and told me to keep the keys and keep an exact account of what was taken off after. On coming out of the barn, after How found I would not stay, How said, I have not said I would resort to unlawful means, have I? I was then confused and replied, you have not said you would.

Elias Hull. At my house shortly before 15th Oct., when Church came in possession, How said Church had agreed, provided he came into possession to make him, How, his agent. I remarked, Church is too prudent a man to do so; and How replied,

if he don't he shall not trouble me many days; reproved him for his language, saying it looked like threatening life. He said I might think so—that he, How, did not value his life a straw without his property. I said you won't kill him. How replied, you may think so, but by God, if he don't do as he agreed, I will kill him.

On the 14th Oct. in another conversation, referring to his former remarks about Church, he said I might think he was in jest; but he was not in jest, for he was in earnest, and he repeated his previous threat.

Cross-examined. Think Van Wickle came with How the night of the first conversation. How was then anxious that the possession should be transferred from Hull to Church; it was transferred on 15th Oct. How wished Hull to sell to Church. How was fearful Hull would evade the arrangement which he alleged he had. Thinks How took me one side in last conversation and said, there has been hard feelings between How and me. Church was there the time of last conversation.

Bradley Sherman. Saw prisoner at my father's house the evening before Church was killed. He came about 7 and stayed until about 9. He ordered his horse fed; he was fed with a peck of oats. Don't know that he ate them; discovered no oats in the manger next morning—other horses might have been fed there; don't know that any horse was fed under the shed.

Alexander Dautrement. Saw prisoner at my house evening

before Church was killed; observed How stoop down to pick up a tumbler; he had a great coat on. As he stooped down, something raised up his coat—believed the coat was bound round his body. When How paid me he raised up his coat with his right hand to his pocket, keeping his left arm and hand to his side, which had something of a bulge under his coat; didn't see him get down.

Hiram Newton. Saw How at Dautrement's, the evening spoken of by Dautrement; saw him stoop down and saw the back side of his coat stick out on the left side; thinks a stick three or four feet would present a similar appearance. His coat was buttoned up close; he was there at 10; was gone when I went to bed.

William Lawrence. Saw How at Dautrement's on the evening; did not see his stoop; saw the bulge in his coat, which looked as if there was something under it like tea; saw How set down sideways on a chair, his left leg on the chair.

George Miles. Between 9 and 10 saw How at Dautrement's; his conduct was rather unusual; he was cordial for the first time; there having been some previous coolness. How appeared to be agitated, changed his subject, talked about his wife, which was singular; he in general talks a good deal.

Mrs. Amy Steenrood. The night Church was killed was up as late as 12 or 1 o'clock, a man of prisoner's bigness passed me about one and a half miles this side of Church's, he was on horse-back; the horse appeared to be dark and so did his clothes; about

half an hour after a man passed back riding very fast; supposed the man to be going after a doctor.

Hugh Higgins. Reside about 7 miles from here, and 3 miles this side of Church's—heard a horse go by, coming east, between 1 and 2; a person on the horse.

Jabez Higgins. Reside between How's and McCoy's, rising half a mile from McCoy's and at the intersection of the road, heard something which was going pretty fast, which then thought was a sleigh, appeared to be going towards How's, was afterwards waked up by sleighs with bells, not to the extent of an hour after.

Russell Harrison. Partner with Hugh Higgins in saw mill; heard a horse going west about 12; got up and saw it with a man on it.

Mrs. Church. Between 1 and 2 a. m., 30th Dec. last, Mr. Church was asleep; somebody rapped at the door and said he had a letter for him. Church desired him to come in; he asked Church if he would come to the door; Church said he would; he did so; when I heard the report of a gun. Church fell, exclaiming, "Oh God," and groaning, instantly died.

Hadn't seen How for a year, though I knew him. The person appeared very polite, saying I have a letter for you; do not undertake to say whose voice it was; did not at the time think of the prisoner. The ball passed through Mr. Church, and struck in the joist—house gabel. Mr. Church slept in the kitchen; no ceiling overhead.

Doctor Dana. Was a neighbor of Church's; went over on being called, past 1 o'clock and saw Church's body; examined it and found he was dead; the ball went in about an inch below the left breast and came out from 3 to 4 inches lower than it went in; his shirt was burnt; there was a ball found in a pine joist about 12 feet from the door; saw Luther Adams take out the ball.

Orange Church. Was there 10 or 15 minutes after father was killed; saw Luther Adams take a ball out of the joist; saw no appearance of a ball in any other part of the room. Adams handed the ball to one man, who handed it to me; don't think another ball could have been substituted; satisfied it was the same ball.

Stephen Smith. Laid awake at 1 and heard the noise of a gun; heard a female voice from Church's; went there and found Doctor Dana; pursued in a single sleigh; James Read and others rode in another sleigh with bells—went directly to How's house—went to the door, rapped; Mr. How bid me come in on the first rap at once. How said, what's the matter? replied, Mr. Church is murdered, he is shot, the woman replied, it can't come from here; for we haven't had a gun in the house for six months. How replied to the woman, yes there is, there's Wilson's gun. By this time, 8 or 10 had got into the house. Mrs. How said, what are you looking after? Saw nothing uncommon in prisoner's clothes. How wanted to know what he was going to do with them—laid them down, then went with Mr. Heath to the barn, found three horses; first was dry

and blanketed; the next was very wet; had appearance of natural sweat, with smoke rising from the breast; didn't observe the horse breathe uncommonly hard.

James Read. Went to How's house that night, on getting there went to the stable; found three horses, the middle was sweaty. Returned to Mr. How's about 9 o'clock; saw a rifle lying on the table; pulled up a horse hair under a piece of the mounting; end of ram-rod seemed some wrapped with cotton, wool or lint. The gun appeared loaded; about one and one-quarter the priming appeared to be wet, as if it had been reloaded without wiping. Gun was found in bedroom.

Cross-examined. Saw the ball which Orange Church had. He compared balls found with the rifle with it; a wheat corn would balance them; found some balls on the table lying with the rifle; they were rather too small for the rifle. It was a cut one. Many rifles carry balls of the same size.

Josiah Utter. Was present at How's on the night; concur with Smith as to appearance of horse; couldn't determine whether there was the appearance of a saddle; the horse was wet and smoked; next to the horse's withers the hair was rough; print of saddle would disappear in winter sooner than in summer; the hair is not then so long; there was a saddle in the house; judged from appearance that the horse had not been recently rubbed.

Romanzo Brooks. Was at Church's not long after his death; found a patch and a tow wad close to Church as he lay on the floor, twixt him and the door, laid them down and then could not

find them; the patch I supposed to be linen; called it home-made tow cloth; I examined it by candle light; the patch was nigh square, about an inch.

James Read (recalled). The next day after I first saw the rifle the patches were square; found patches in the box of rifles, they were white and clean; my impression is they were about an inch.

Aaron Brown. Two nights be-asked me what the gun was fore Church's death saw the rifle at McCoy's; when How went off

he took up a gun from the side of the garden fence and went off with it; it was a short rifle; had been cut off; was called the Wilson rifle; think four feet long. I took the gun up about two rods from the north door. How worth. How said he came round on the hill and perhaps might find a deer and get a shot at it.

George Doty. Saw prisoner once in September at Chapman's tavern; said he had been pretty hard run by five or six; mentioned no names; said it was a long lane that had no turn.

THE WITNESSES FOR THE PRISONER.

Emily Redfield. Was at home the afternoon before Church was killed. How used the gun to shoot at quails; heard the gun discharged; he shot one. The house stands back from the road; has two outside doors; one goes into kitchen, and one into another room. The gun was sometimes carried into another room, which had no outside door; slept in a middle room, through which you would have to go to get in there; heard nobody go through my room that night.

Cross-examined. Two or three weeks before Church's death, the gun was carried out to the gate two or three times by Wilson, and another time by David and prisoner; the last I saw of the gun was standing up after the quails were shot at, whilst they were loading it. Did not see the gun next morning, until Mr. Read came there; was not in that room that night.

David How. Brought the horse out for my father when he started; saw no gun about him; the

gun was usually kept around in a back room not occupied by the family; was not in that room that night; the gun was called Wilson's gun; Wilson sometimes took the gun out to the gate; Wilson and father brought back the gun from the gate four or five days before. The horse blanket was thrown on the gun in the sleigh.

Cross-examined. Father left home at one hour after dark; it was so dark couldn't see father far, though saw him get on the horse; father once took the gun to the gate; remember the coming of the party in the morning; Wilson and I got up about daylight; prisoner wore the same coat he now has on. There was but one window, about six feet from the table where the gun lay, about four feet from the ground. The same horse which father rode was sweaty in the morning; he stood between two other horses. Wilson had frequently taken the horse out to the gate with him.

Stephen Smith. How came to the village of Angelica willingly with me and my party before he was arrested.

Joshua Hicks. Know Amos Freeman; four weeks ago conversed with him at McCoy's. Mr. McCoy and I asked Freeman if he had not reported that How made overtures, offering him half the property, he said he had not. He went on to state that he had a conversation with How; that he surmised from it that How meant to injure Mr. Church, though Mr. How made no threats and that he had put Church on his guard.

John McIntosh. Know Amos Freeman; three or four weeks ago Freeman was at my house. I said: it has been reported that Mr. How offered you a premium to take Church's life. Freeman said it was no such a thing; he denied wholly that How had put such a question to him; and such a proposal would be unpleasant to him; for he was above it; reminded him that he had testified so; he replied that it was a lie; that he never had sworn to such a thing.

Angus McIntosh. Was present part of the time; heard questions put to Freeman and heard Freeman answer, saying it was a falsehood; and appeared to be disturbed and affronted; being told he had sworn to it, he said it was a lie.

Francis DeLong. Know Freeman; in the town of Allen his general reputation for truth and veracity is bad. We are not on good terms. About four years ago Wilson had hostilities against me but has not any at present; don't recollect ever threatening him; was party in two suits in

Allen; Freeman's testimony was against my interest.

James Wilson. Reside in Allen; know Freeman; his general reputation is that he is a man not to be depended upon when under oath. Never heard the neighbors speak of his character for veracity except in reference to the trials in Allen, but on that account would not attach much credit to them in any case.

Chester Roach. Freeman's reputation in Allen for truth and veracity is bad; some of the neighbors had reference to the trials; some not; but the greater part not, when speaking of his reputation.

Robert Barr. Freeman was not thought by those who heard those trials to be a man of truth and veracity in his testimony at those trials. Mr. DeLong, Mr. Wilson, Mr. Scotts, Mr. B. Bride and others have spoken of them.

Jeremiah Fuller. Know Freeman; majority of the people in my neighborhood think his character for truth and veracity bad; they mentioned the trials, and did not speak of his veracity in any other respect.

Josiah Whitman of Allen. Know Freeman; majority of the people heard speak about him, call his character bad; they have spoken of him in reference to those trials.

Mr. Wickes (recalled). Horses will sometimes perspire profusely from some disorder; this is when they appear to be in pain; perspiration will appear sometimes to relieve pain and will also give rise to smoke, the same as other sweat.

William Geiger. Am acquainted with horses considerably;

have seen perspiration produced by pain; belly-ache most apt to produce it; horses will continue wet after pain subsides; the perspiration will be chiefly in the flank and before the shoulders; they will smoke; have seen horses while in pain; they will eat after pain has subsided; sweat will then become stiff, and cease to smoke though the horse continues wet.

Henry Tracy. Was in Burr's office at the time of assignment; there was a dispute, How said he didn't care what people said about him, if he could only sleep at night.

Bradley Sherman. Was in the barroom and kitchen at time mentioned; did not observe anything unusual about How, either in coat or otherwise.

THE PEOPLE IN REBUTTAL.

Jonathan Post. Conversed with Freeman a few days after jury of inquest; told him that he said Mr. How had made proposals to him to kill Mr. Church; he denied that How had made such a proposal; that How's proposal was not to kill or murder Church, but only to put him out of the way; think what he stated there under oath was very remarkably the same that he told me, except did not observe him testify about the injunction of secrecy; there were several sentences of his testimony which I did not understand. Freeman has lived in Angelica on the river not far from Allen for the last year, about seven miles from Scott's; have never heard, in the town of Angelica, a word against his character for truth and veracity, but have heard the unfavorable reports from people in Allen; never until of late heard any person speak, either for or against him; his character in Allen is bad, growing out of those trials.

Mrs. Ann Church. Freeman lived two years at my house; left there a year last fall; was a stranger when he came there; heard from Freeman himself that

he was censured for his testimony in Allen; have heard his character for truth and veracity impeached in reference to those trials; cannot speak of his general character, except that my impressions are in his favor.

John T. Hyde. Have known Freeman about three or four years; never heard his character for truth and veracity impeached until today; Freeman came in a stranger. Have known prisoner seven or eight years; don't know of his hunting; may have hunted frequently for aught I know; live about two miles from How's; never saw him have a gun in his hands. Freeman on the next day after he was sworn, said he was going to write down what How had said to him.

Col. King. Knew Freeman about two years; never heard but little said of his reputation for truth and veracity; never heard it impeached until today; reside in Friendship, six or seven miles from Freeman's.

Moses Van Campen, Stephen Smith, Dr. Dana, August Dautrement and Andrew A. Norton testified that he was a man of good character and reputation.

Mr. Taylor. Have had some experience with horses; owned a great many; belly-ache generally causes bloating.

Amos Thatcher. Conversed with How two or three weeks before Church's death; How said he was inclined to leave his bail and go home and take his gun and put a ball through the first man that entered on his premises, he had been talking respecting people drawing grain from his Redfield farm.

Judge Merriman. In forepart of November, How talked of Church being in possession of the

Dautrement farm; was about buying some tubs of How; went down, found Church there eating breakfast; How asked me to go to the corn house and see the tubs; Church agreed to deliver up the tubs; going back, How, in talking about his property, said he couldn't stand it; if Church was on the place, he must have it arranged in some way to have him off; had as well have the devil there as to have Church there. He was trying to get me to sign a note to Davenport, so that he, How, might get possession of the property.

THE PRISONER'S WITNESSES 'AGAIN.

William Byrns. Was at Dautrement's the night previous to the murder; I and prisoner were sitting on a bench at a table conversing together; took a glass of grog; prisoner was sociable; saw nothing uncommon in him; stayed all night; prisoner went

away about 10; had a great coat on.

Thomas Mathews. Assisted in hauling the grain from the Redfield place where prisoner resided for Palmer; do not know that deceased had anything to do with it.

THE PEOPLE AGAIN.

Wilson Redfield. The day before Church was shot, after shooting quail, How and I reloaded the rifle with a patch from the box; saw the gun next morning as it lay in the room and was loaded, load was afterwards taken out on Wednesday at Cuba, a very heavy charge; I observed it; there was no patch in the gun when the load was taken out; there was no tow cloth about the gun; a horse blanket was previously over the gun. The black horse was sick; do not know that the mare was sick. There was tow between the powder and the ball. The load which How and

I put in, in the afternoon was square and of leather.

Daniel Tabar. Saw the charge extracted at Cuba; no patch about a double charge.

Alexander Dautrement. Have seen the experiment with a rifle; appearance corresponded with what I observed about How as to sticking up behind and partly as to bunch upon breast.

Hiram Newton. Saw the experiment today, resembled How's appearance in projecting behind that night.

William Lawrence. Also saw the experiment, protuberance be-

fore was about the same as what he observed in How; a man sat down as How did, and nothing was to be seen except the protuberance.

James Read. Am the man who tried experiments with the same rifle; it was done at the request of Sheriff Wilson.

Dr. Dana. Mr. Spencer recommended the experiment last night, which was renewed by Sheriff Wilson today; corresponded with my idea.

Amos Seabody. Was at Daument's 15 minutes; saw How and Burns; thought Burns was tipsy; observed nothing under How's coat, saw How in a chair.

Simeon Heath. When How

came over in the morning, he said the mare he rode had been sick the day before he started from home; the cause he said was, he had been feeding his horses with corn; he said he had some trouble coming over, in consequence of mare's sickness, and much trouble going home; said she laid down.

Stephen Smith. How said to his step son, you know the horse was sick; the latter replied yes, but the mare was not mentioned. How said the mare was sick going over to Angelica, and was sick going home; she laid down several times; ascribed it to corn, another time to potatoes, saying he had no grain.

The case was summed up by *Fletcher M. Haight* and *Felix Tracy*, for the Prisoner, and *John C. Spencer*, for the People. After a charge by JUDGE ROCHESTER, the jury retired about two o'clock on Thursday night, February 5. and returned before six on Friday (6th) with a verdict of *Guilty*.

JUDGE ROCHESTER sentenced the Prisoner to be hanged.

THE CONFESSION.

After the sentence, *How* confessed the murder. He told the story in the following words:

I shall now describe the murder of Othello Church. Yes, in a cool deliberate manner I murdered him! Called him from his sweet slumbers, and from the bosom of his wife—never more to return to her fond embrace—to sink him in the grave. Yes, his own floor I bathed with his warm blood, and his soul I hurried off to another world. I heard the new-made widow's scream, and the wretched orphan's cries, which pierced my flinty heart. May God forgive me, and wash the crimson stain from my afflicted soul. I was aggravated to this crime by injuries, personal abuses, and insults; but they are no excuse for me. I had some time calculated on his destruction, and one day, a few weeks before his death, he went to Angelica, and I expected him to return in the evening. I loaded a gun and way-laid the road between his house and mine, in the woods between Me-

Coy's tavern. Here I tarried until late at night, awaiting his return; but he did not come. I first took my stand behind a root, and then, for my better accommodation, behind a large pine tree, and had he come I surely would have shot him. While I here stood I had some reflections; the sweet evening breeze gently pressed the lofty forest, and the tall pines could bend beneath the power of Heaven—but my obdurate heart remained unmoved. 'The next day I went to Angelica, and there I saw Mr. Church and I felt very glad he had escaped. After reflecting on the subject and getting no satisfaction, I fixed my eye on him again, and I could not spare him. Accordingly in December I watched the state of the snow that I might not be tracked, and on the 29th I thought the thing was ripe. In the afternoon, I loaded the rifle, and placed it in a bedroom where no person slept, and where I could reach it from the window if occasion should require. I then rode to Angelica, four miles east; Mr. Church lived about six miles west of my house; I put my horse up at Sherman's tavern, and fed it. I was about the village until after 10 o'clock that night. At Mr. Dautrement's I drank considerable brandy and calculated to take as much as I could and do business regular. I then rode home, stopped at the barn opposite my house, and dismounted, and had serious reflections on the course I was pursuing. After a considerable pause I resolved to go, for I never allowed myself to give back in any undertaking. I then went to the bedroom window, and took out the gun; no one of my family knew it, and road a smart trot to Church's. I hitched my beast near Mr. Spear's shop—took out my knife and rubbed my flint that it might not miss fire. I took the mitten from my right hand, and put it in my pocket. I was careful not to drop anything whereby I might be detected. I then stepped to his kitchen door, which opened near the head of his bed, and stood five or six minutes on his door stone. All creation seemed locked in slumber, and one dread silence reigned through all the works of God.

Now my bold heart even trembled at the thought of an act so desperate, and every vibration of my soul seemed shrinking beneath the horrors of the scene.

I rapped at his door and shuddered at the very noise I made; and was on the very point of retiring, when his wife, I think, awoke him, and he exclaimed, "Who is there?" I endeavored to alter my voice, and answered, "I have a letter for you;" he then said, "walk in." I answered, "have the goodness to open the door and take it." He arose and as he opened the door, as soon as I saw the appearance of his white shirt, I shot at venture. I took no sight and had the gun by my side. I think the muzzle was not more than three or four feet from him. I then heard him exclaim, "Oh! my God, my God!" I heard no more of him. I then returned to my beast, and every step was marked with care, lest I should fall or lose something, as it was slippery. The shocking cries and shrieks of the family broke the midnight silence, and rent the air with horror, which I heard a considerable distance. I then rode with great speed home. I dismounted

and loaded my gun in haste and set into the window whence I had taken it; then I put out my beast, went to bed and went asleep. Before day the neighbors of Mr. Church called on me, and informed me he was murdered in his own house.'

March 19.

David D. How, in accordance with the sentence of February 6th, was hanged today.

INDEX

INDEX

A

- ALEXANDER, DR.
Magistrate in examination of
Harper's Ferry Raid and
John Brown's Trial, 711
- ALEXANDER, GENERAL WILLIAM
See STIRLING, LORD
- ANDERSON, JEREMIAH G.
A Harper's Ferry raider, 702
- ANDERSON, OSBORN
A Harper's Ferry raider, 702
- ANDRÉ, MAJOR JOHN
Trial of; before Court Martial
for being a spy, 464-485
The members of the Court, 468
Major André's statement, 472
His letter to General Washing-
ton, 472
The evidence, 473
The sentence, 477
The efforts to save André's life,
478
His request to be shot, 484
The execution by hanging, 484
- ARNOLD, BENEDICT
Trial of, by Court Martial for
misdemeanors, 411-463
The members of the Court, 414,
415
The charges, 418-424
The evidence on the first
charge, 424
The witnesses for the prosecu-
tion, 425, 426
The evidence on the second
charge, 426
The witnesses, 428-429

- The evidence on the third
charge, 430
The witnesses, 433-435
The witnesses for the defense,
435-441
General Arnold's speech to the
Court, 441-442
The judgment and sentence,
462
General Washington's repri-
mand, 463
- ARSON
Trial, conviction and execution
of Stephen M. Clark for, 597-
670
Trial, conviction and execution
of Stephen Russell for, 671-
674
- ASSAULT AND BATTERY
Clark, John H., 96-98
Farquhar, William, 96-98
- AUSTIN, J. T.
Counsel for Commonwealth in
Trial of Russel for arson,
672

B

- BAILEY, JOHN L.
Judge in Trial of George W.
Carawan for murder, 514
His charge to the jury, 588-593
- BALL, MAJOR
Member of Court Martial in
Trial of Joshua H. Smith,
488
- BARIOU, JOEL
Sketch of, 690

BECKHAM, MAYOR

Victim of the Harper's Ferry
Raid, 706, 762

BIBLIOGRAPHY

Of Major André Trial, 468
Of Benedict Arnold Trial, 415
Of Boorn Trial (murder), 77
Of Brown Trial (treason), 709-
710
Of Carawan Trial, 514
Of Chapman Trial (murder),
106
Of Clark Trial (arson), 599
Of Cook Trial (treason), 816
Of Russel Trial (arson), 671
Of Smith Trial, 487

BIGGS, DR.

Interviews John Brown, 715

BOERLY, THOMAS

Victim of John Brown Raid,
724

BOUDINET, ELIAS

Witness in Trial of Benedict
Arnold, 441

BOORN, JESSE

See BOORN, STEPHEN AND JESSE

BOORN, STEPHEN AND JESSE

Trial of, for murder of Russel
Colvin, 73-95
The Judges, 77
The Counsel for the State, 78
The Counsel for the prisoners,
79
The evidence for the State, 79-
89
The evidence for the prisoners,
81-91
The confession of Stephen
Boorn, 88
The verdict and sentence, 91
The return of the supposed
murdered man, 91
The discharge of the prisoners,
95

BOTTS, LAWSON

Counsel for John Brown in
trial for treason, 728
Argues motion for postpone-
ment of trial, 730
Argues motion as to sanity of
prisoner, 734
His opening speech to the jury,
739, 740
Counsel for Coppoc in trial for
treason, insurrection and
murder, 807

BRADLEY, COLONEL STEPHEN

Member of Court-Martial in
Benedict Arnold's Trial, 415

BRAYTON, WILLIAM

Judge in Trial of the Boorns
for murder, 77

BREWSTER, FREDERICK C.

Judge in trial of Twitchell for
murder, 2
His charge to the jury, 38-59
Overrules exceptions to ver-
dict, 60-62
Sentences prisoner to be
hanged, 62, 63

BROWN, DAVID PAUL

Counsel for prisoner in Trial
of Lucretia Chapman for
murder, 107
His speech to the jury, 317-373

BROWN, JOHN

Trial for treason and insurrec-
tion, 700-805
The interview with John
Brown in the Paymaster's
office, 711-716
The Commitment, 716
The examination before the
Magistrate, 710, 717, 718
Counsel assigned the pris-
oners, 718
John Brown accepts Counsel,
719

- The witnesses examined, 720
Judge Parker's charge to the Grand Jury, 721
The indictment, 723-727
Appears in Court wounded and on cot, 725-727
The Counsel for the Commonwealth and the prisoner, 728
John Brown asks for delay, 729
Mr. Botts argues motion for delay, 730
Mr. Hunter replies, 730
Mr. Harding and Mr. Green address the Court, 731
Judge Parker refuses to delay trial, 731
Witnesses examined as to the physical condition of the prisoner, 732
The jury, 732
The questions asked the jurors, 732
Telegram read as to insanity in prisoner's family, 733
John Brown rejects the plea, 734
Mr. Botts argues the question, 734
Mr. Hunter replies, 735
Mr. Harding and Mr. Green address the Court, 735
Judge Parker refuses the application, 737
Mr. Harding's opening speech to the jury, 737-739
Mr. Botts, opening speech to the jury, 739, 740
Mr. Hunter's opening speech to the jury, 740-742
The witnesses for the Commonwealth, 742-753, 755-760
George H. Hoyt of Boston, appears as Counsel for Brown, 753
Mr. Hunter objects, 754
Judge Parker permits him to take part, 753
The witnesses for the defense, 760-763
Brown suggests line of defense to Counsel, 761-763, 767-772
Brown again asks delay, 763
Mr. Hoyt supports motion for delay, 763
Mr. Hunter objects, 764
Mr. Harding and Mr. Green argue the point, 765
Judge Parker allows a postponement, 765
Samuel Chilton of Washington, and Hiram Griswold of Cleveland, appear as Brown's Counsel, 766
Mr. Chilton asks delay, 766
Judge Parker orders trial to go on, 766
Mr. Chilton attacks indictment, 774, 775
Mr. Harding replies, 774, 775
Judge Parker sustains the prosecution, 776
Mr. Griswold again asks for delay, 776
Mr. Hunter objects, 776
Mr. Chilton and Mr. Hoyt support the motion, 776
Judge Parker orders case to proceed, 777
Mr. Griswold's address to the jury, 778-795
Mr. Hunter's address to the jury, 795-799
The verdict of the jury, 799
Mr. Chilton moves in arrest of judgment, 800
Judge Parker overrules motion, 800
John Brown sentenced to be hanged, 802
John Brown's last speech, 800

- Appeal to the Supreme Court
argued by Mr. Chilton and
William Green, 802
Court refuses to interpose, 802
Appeal for commutation to
Governor Wise, 802
His letter to Fernando Wood
of New York, 803
The execution of John Brown,
804
- BROWN, OLIVER
A Harper's Ferry raider, 702
- BROWN, OWEN
A Harper's Ferry raider, 702
- BROWN, WATSON
A Harper's Ferry raider, 702
- BRYAN, GEORGE
Vice-President Philadelphia
Council, 417
- BRYAN, JAMES W.
Counsel for prisoner in Trial
of Carawan for murder, 515
His speech to the jury, 567
- BURR, MOSES W.
Magistrate in examination of
Harper's Ferry Raid and
John Brown's Trial, 711
- BUTLER, COLONEL
Member of Court Martial in
Benedict Arnold's Trial, 415
- C
- CARAWAN, GEORGE W.
Trial of, for murder of Clement
H. Lassiter, 514-596
The Judge, 514
The Counsel, 515
The jury, 516
Mr. Stevenson's opening ad-
dress, 516-522
The evidence for the State,
522-539
Mr. Rodman's opening address,
539-541
- The witnesses for the defense,
542-544
Rebutting evidence for the
State, 545
Mr. Carter's speech to the jury
for the prosecution, 545
Mr. Satterthwaite's speech to
the jury for the defense, 546
Mr. Rodman's speech to the
jury for the defense, 546-567
Mr. Bryan's speech to the jury
for the defense, 567
Mr. Warren's speech to the
jury for the State, 567-588
Judge Bailey's charge to the
jury, 588-593
The verdict of guilty, 593
The prisoner's attack on Mr.
Warren, 594
His suicide, 594
The prisoner's last night, 594
The confession of his negro
servant, 594-596
- CARTER, DAVID M.
Counsel for State in Trial of
Carawan for murder, 515
His speech to the jury, 545
- CHAPMAN, LUCRETIA
Trial of, for murder of her hus-
band by poisoning, 99-396
The Judges, 106
The Counsel for the Common-
wealth, 107
The Counsel for the prisoner,
107
Juror questioned as to his
scruples as to capital pun-
ishment, 108
The Court refuses to allow the
question, 109
The juror may state his
opinion, 110
The jury empaneled, 110
Mr. Ross' opening speech for
the prosecution, 110-114

- The evidence for the prosecution, 114-164
 Mr. McCall's opening speech for the defense, 164-177
 The witnesses for the defense, 177-193
 Mr. Reed's speech to the jury for the Commonwealth, 193-258
 Mr. McCall's speech to the jury for the prisoner, 258-317
 Mr. Brown's speech to the jury for the prisoner, 317-373
 Mr. Ross' speech to the jury for the Commonwealth, 373-379
 Judge Fox's charge to the jury, 379-396
 The verdict of acquittal, 396
- CHASE, CAPTAIN
 Member of Court Martial in Trial of Joshua H. Smith, 488
- CHASE, DUDLEY
 Judge in Trial of the Boorns for murder, 77
- CHILTON, SAMUEL
 Counsel for John Brown in Trial for treason, 766
 Makes motion to postpone trial, 766-776
 Attacks indictment, 774, 775
 Moves in arrest of judgment, 800
 Argues appeal in Supreme Court, 802
- CHOATE, RUFUS
 Counsel for prisoner in Trial of Russell for Arson, 672
- CLARK, JOHN H. *See* FARQUHAR.
- CLARK, WILLIAM
 CLARK, STEPHEN M.
 Trial of, for arson, 597-670
 The Judges, 599
 The Counsel, 599
- The jury, 600
 Mr. Davis' opening address 600-604
 The evidence for the Commonwealth, 604-612
 Mr. King's opening address, 612-621
 The witnesses for the prisoner, 621-623
 Witnesses in rebuttal, 624
 Mr. Pickering's speech to the jury for the prisoner, 625-641
 Mr. Davis' speech to the jury for the Commonwealth, 641-657
 Chief Justice Parker's charge to the jury, 657-664
 The verdict of guilty, 664
 The sentence of death, 664-667
 The prisoner's confession, 667-669
 The execution, 669, 670
- CLARKSON, MATTHEW
 Biographical note, 457
- CLINTON, BRIGADIER GENERAL
 JAMES
 Member of Court in Trial of Major André, 468
- COBBETT, WILLIAM
 Trial of, for libel, 675
 The Judges
 Chief Justice McKean's charge to the Grand Jury, 678-683
 The indictment, 683
 The return of "no bill," 686
- CODMAN, JOHN
 Counsel for prisoner in Trial of Russell for arson, 672
- COLDEN, CADWALLADER D.
 Judge in Trial of John Wood for sending a challenge to a duel, 68
 Sentences prisoner to fine and disqualification to hold office, 72

- COLLIS, CHARLES H. T.
 Counsel for prisoner in Trial of Twitchell for murder, 3
- CONFESSIONS
 Admissibility of evidence of, 605
 Of Stephen Boorn (murder), 88
 Of Stephen M. Clark (arson), 667-669
 Of John E. Cook (treason), 825-834
 Of John A. Copeland (insurrection), 811
 Of David D. How (murder), 877
 Of Carolino De Mina (murder), 408
 Of George S. Twitchell (murder), 64-66
- COOK, JOHN E.
 Trial of, for treason, insurrection and murder, 814-862
 The Judge and Counsel, 816
 The evidence, 818-825
 The prisoner's confession, 825-834
 Mr. Voorhees' address to the jury, 834-859
 The verdict of guilty, 858
 His speech to the Court, 859
 The sentence of death, 859
 Effort to have sentence commuted, 859
 His attempt to escape and capture, 860
 The execution, 861
- COPELAND, JOHN A.
 Trial of, for insurrection and murder, 809-813
 The Judge, 810
 The prisoner's confession, 811
 Mr. Sennott argues that a negro cannot be convicted of treason, 812
- Judge Parker sustains the plea, 812
 The verdict of guilty, 812
 The execution, 861
- COPPOC, EDWIN
 Trial of, for treason, insurrection and murder, 806
 The evidence, 807
 The verdict of guilty and sentence, 808
 His speech to the Court, 859
 The fruitless attempt to escape, 860
 The execution, 861
- COPPOC, BARCLAY
 A Harper's Ferry raider, 702
- CORPUS DELECTI
See MISTAKEN IDENTITY
- D
- DANGERFIELD, JOHN P
 Wrote article on John Brown's Raid, 710
 Witness on Trial of Brown, 767
- DAVIS, DAVID
 Counsel for Commonwealth in Trial of Clark for arson, 599
 His opening address, 600-604
 His closing speech to the jury, 641-657
- DAYTON, COLONEL ELIAS
 Member of Court Martial in Benedict Arnold's Trial, 415
- DE MINA, CAROLINO
 Trial of, for the murder of William Chapman, 397
 A jury *de medietate lingue* allowed, 108
 The Judges, 398
 The Counsel for the Commonwealth, 398
 The Counsel for the prisoner, 398
 The jury, 398
 The witnesses, 399

The speeches to the jury, 406
 The verdict of guilty and sentence to death, 407
 The confession, 408
 The execution, 408
 DONNELL, RICHARD S.
 Counsel for prisoner in Trial of Carawan for murder, 513

DOOLITTLE, JOEL
 Judge in Trial of the Boorns for murder, 77

DRAKE, JOHN R.
 Counsel for prisoner in Trial of John Wood for sending challenge to fight a duel, 69

DREW, CAPTAIN
 Member of Court Martial in Trial of Joshua H. Smith, 488

DUELING
 Trial of John Wood for sending challenge to fight a duel, 68-72
 Sentenced to fine and disqualified from ever holding public office, 72

E

EICHELBERGER, GEORGE W.
 Magistrate in examination of Harper's Ferry Raid and John Brown's Trial, 711

EXECUTIONS

John Brown (treason), 804
 Carolino de Mina (murder), 408
 Stephen M. Clark (arson), 669
 John E. Cook (treason), 861
 John A. Copeland (insurrection), 861
 Edwin Coppoc (treason), 861
 Shields Green (insurrection), 861
 Albert Hazlett (treason), 864

Stephen Russell (arson), 674
 Aaron D. Stevens (treason), 864

EXPERTS

Testimony of medical experts as to poisons, 124, 125, 148, 150, 154, 159, 177, 178, 402, 403

F

FARQUHAR, WILLIAM, and JOHN H. CLARK

Trial of, for assault and battery, 96-98

The Judge and Counsel, 96

The evidence, 97

The speeches to the jury, 97, 98

The verdict, 98

FAULKNER, CHARLES J.

Appointed Counsel for John Brown in Trial for treason but declines, 718, 719

FAY, MR.

Counsel for prisoner in Trial of Anthony Haswell for a seditious libel, 696

FAYETTE, MARQUIS DE LA

Member of Court in Trial of Major André, 468

Witness in Trial of Joshua H. Smith, 505

FOWLE, CAPTAIN

Member of Court Martial in Trial of Joshua H. Smith, 488

FOX, JOHN

Judge in Trial of Lucretia Chapman for murder, 106

His charge to the jury, 379-396

Judge in Trial of Carolino De Mina for murder, 398

His charge to the jury, 406

FRANKS, DAVID S.

Secretary to Benedict Arnold. 428

- Witness at his trial, 429, 438, 439, 440
Not guilty of knowledge of André's plot, 475, 486
- FRYE, CAPTAIN
Member of Court Martial in Trial of Joshua H. Smith, 488
- G
- GIST, GENERAL MORDECAI
Member of Court Martial in Benedict Arnold's Trial, 414
- GLOVER, BRIGADIER GENERAL JOHN
Member of Court in Trial of Major André, 468
- GREEN, LIEUTENANT ISRAEL
Leads attack of Marines at Harper's Ferry, 707
His narrative of the fight, 769-771
- GREEN, SHIELDS
Trial of, for treason, insurrection and murder, 809-813
Mr. Sennott argues that a negro cannot be guilty of treason, 812
Judge Parker sustains the plea, 812
The verdict of guilty, 812
His execution, 861
- GREEN, THOMAS G.
Counsel for John Brown in Trial for treason, 728
Argues motion for delay, 731-765
Argues motion to examine sanity of prisoner, 735
Counsel for prisoner in Trial of Coppoc for treason, insurrection and murder, 807
- GREEN, WILLIAM
Asks Supreme Court for writ of error for John Brown, 802
- GREENE, MAJOR GENERAL NATHANIEL
Member of Court in Trial of Major André, 468
- GRISWOLD, HIRAM
Counsel for John Brown in Trial for treason, 766
Asks for postponement of trial, 776
Address to the jury, 778-795
- GUNBY, COLONEL
Member of Court-Martial in Benedict Arnold's Trial, 415
- H
- HAGERT, HENRY S.
Counsel for Commonwealth in Trial of Twitchell for murder, 3
His closing speech to the jury, 28-31
- HALL, COLONEL
Member of Court Martial in Benedict Arnold's Trial, 415
- HAMILTON, LIEUTENANT COLONEL
Witness in Trial of Benedict Arnold, 439
Witness in Trial of Joshua H. Smith, 496, 497
- HAMPTON, COLONEL RICHARD
Member of Court Martial in Benedict Arnold's Trial, 415
- HAND, BRIGADIER GENERAL EDWARD
Member of Court in Trial of Major André, 468
- HARDING, CHARLES B.
Counsel for Commonwealth in Trial of John Brown for treason, 728
Argues motion for delay, 731-765
Argues motion as to sanity of prisoner, 735

- His opening address to the jury, 737-739
Counsel for Commonwealth in Trial of Coppoc for treason, insurrection and murder, 807
Counsel for Commonwealth in Trial of Cook for treason, insurrection and murder, 816
- HARMAR, LIEUTENANT COLONEL
Member of Court Martial in Benedict Arnold's Trial, 415
- HARPER'S FERRY
The raid upon, 700
The names of the raiders, 702
Their fate, 702
The Trial of John Brown, 700-805
The Trials of his associates, 806-863
The executions, 804, 861, 864
- HARRISON, COLONEL
Member of Court Martial in Benedict Arnold's Trial, 415
Witness in Trial of Joshua H. Smith, 494, 497
- HART, LIEUTENANT COLONEL
Member of Court Martial in Trial of Joshua H. Smith, 488
- HASWELL, ANTHONY
Trial of, for a seditious libel, 695-699
The Judges, 695
The Counsel, 696
The evidence and argument, 697
The prisoner's speech to the jury, 697-699
The verdict and sentence, 699
- HAYWARD, SHEPHARD
First victim of Harper's Ferry Raid, 705
- HAZEN, COLONEL MOSES
Member of Court Martial in Benedict Arnold's Trial, 415
- HAZLETT, ALBERT
His Trial and execution, 863
- HITCHCOCK, SAMUEL
Judge in Trial of Matthew Lyon for a seditious libel, 689
Judge in Trial of Anthony Haswell for a seditious libel, 695
- HOW, DAVID D.
Trial of, for murder, 865
The Judges and counsel, 867
The witnesses for the People, 868-873
The witnesses for the prisoner, 873-875, 876
Evidence in rebuttal, 875, 876
The sentence and execution, 877, 878
The prisoner's confession, 877
- HOWE, MAJOR GENERAL
Member of Court Martial in Trial of Benedict Arnold, 414
Member of Court in Trial of Major André, 468
- HOYT, GEORGE H.
Arrives from Boston as Counsel for Brown, 753
Mr. Hunter objects, 754
Judge Parker allows him to take part, 754
Was really a spy, 753
Supports motion to delay trial, 763
- HUNTER, ANDREW
Counsel for Commonwealth in Trial of John Brown for treason, 728
Argues motion for delay, 730, 764, 776
Argues motion as to insanity, 735

His opening speech to the jury,
740-742

Objects to appearance of Hoyt
of Boston, 754

Suspects Hoyt of being a spy,
753

His closing speech to the jury,
795-799

Counsel for Commonwealth in
Trial of Coppoc for treason,
insurrection and murder, 807

Counsel for Commonwealth in
Trial of Cook for treason, in-
surrection and murder, 816

HUNTINGTON, BRIGADIER GENERAL
JABEZ

Member of Court in Trial of
Major André, 468

INDICTMENTS

Brown, John (treason), 723-
727

Cobbett, William (libel), 686

Copeland, John A. (insurrec-
tion and murder), 723-727

Coppoc, Edwin (treason), 723-
727

Green, Shields (insurrection
and murder), 723-727

Lyon, Matthew (seditious
libel), 690

Stevens, Aaron C. (treason and
murder), 723-727

INFANCY. *See* WITNESSES

Boy of sixteen, convicted and
hanged for arson, 597-669

INGERSOLL, JARED

Attorney General of Pennsyl-
vania in prosecution of Cob-
bett for libel, 678

IRVINE, GENERAL WILLIAM

Member of Court Martial in
Benedict Arnold's Trial, 414

J

JACKSON, COLONEL HENRY

President of Court-Martial in
Trial of Joshua H. Smith,
487

Member of Court Martial in
Benedict Arnold's Trial, 415

JUDGES

Alexander, Dr., 711

Alexander, William, 469

Bailey, John L., 514

Ball, Major, 488

Bradley, Colonel, 415

Brayton, William, 77

Brewster, Frederick C., 2

Burr, Moses W., 711

Butler, Colonel, 415

Chase, Captain, 488

Chase, Dudley, 77

Clinton, James, 468

Colden, Cadwallader D., 68

Clark, Crandall, 866

Dale, Thomas, 866

Davenport, Braxton, 710

Dayton, Colonel, 415

Doolittle, Joel, 77

Drew, Captain, 488

Eichelberger, George W., 711

Fowle, Captain, 488

Fox, John, 106, 398

Frye, Captain, 488

Gist, General, 414

Glover, John, 468

Greene, Nathaniel, 468

Griffin, John, 866

Gunby, Colonel, 415

Hall, Colonel, 415

Hampton, Colonel, 415

Hand, Edward, 468

Harmer, Colonel, 415

Harrison, Colonel, 415

Hart, Lt. Col., 488

Hazen, Colonel, 415

Hitchcock, Samuel, 689, 695

Howe, Major General, 414, 468

Huntington, Jabez, 468
Irvine, General, 414
Jackson, Colonel, 415, 487
Knox, General, 414, 468
La Fayette, Marquis, 468
Lewis, Charles H., 711
Lock, John J., 711
Long, William, 106, 398
Ludlow, James R., 2
Marshall, Captain, 488
Maxwell, General, 414
Merriam, Sylvanus, 866
Morton, Marcus, 671
Moylan, Colonel, 415
McKean, Thomas, 677
Parker, Isaac, 599
Parker, Richard, 709, 806, 810,
 816
Parsons, Samuel H., 468
Patterson, John, 468
Patterson, William, 689, 695
Popkins, Colonel, 415
Putnam, Samuel, 599
Riker, Richard, 96
Rochester, William B., 866
St. Clair, Arthur, 468
Sanford, Captain, 488
Shaw, Lemuel, 671
Sherburne, Colonel, 415
Sims, Colonel, 415
Smallwood, General, 414
Smith, John F., 711
Spencer, Colonel, 415
Stark, General, 414, 468
Steuben, Baron de, 468
Stirling, Lord, 468
Thacher, George, 599
Thomas, Vial, 866
Tiffany, Captain, 488
Van Cortlandt, Colonel, 415
Watts, William, 106, 398
Weisenfeldt, Colonel, 415
Wilde, Samuel S., 599, 671
Willis, Thomas H., 711
Wood, Colonel, 415

Woodford, General, 414
Wright, Capt. J. A., 488
Wright, Capt. Jacob, 488

JURY

Juror may not be questioned
 as to his opinion on capital
 punishment, 109
But may state his opinion him-
 self, 110
A jury *de medietate lingue*,
 108

K

KAGHI, JOHN H.

A Harper's Ferry raider, 702

KING, JOHN S.

Counsel for prisoner in Trial
 of Clark for arson, 599
His opening address, 612-621

KNOX, BRIGADIER GENERAL

Member of Court Martial in
 Benedict Arnold's Trial, 414
Member of Court in Trial of
 Major André, 468
Witness in Trial of Joshua H.
 Smith, 506

L

LAWRENCE, JOHN

Judge Advocate in Trial of
 Benedict Arnold, 417
Judge Advocate in Trial of
 Major André, 469
Judge Advocate in Trial of
 Joshua H. Smith, 488

LAWYERS

Austin, J. T., 672
Botts, Lawson, 718, 728, 807
Brown, David Paul, 107
Bryan, James W., 515
Burr, Alvin, 867
Carter, D. M., 515
Chilton, Samuel, 766
Choate, Rufus, 672
Codman, John, 672

- Collis, Chas. H. T., 3
 Cruger, Daniel, 866
 Davis, David, 599
 Donnell, R. S., 515
 Drake, John R., 69
 Faulkner, Charles J., 718
 Fay, Mr., 696
 Green, Thomas G., 728, 807
 Green, William, 802
 Griswold, Hiram, 766
 Hagert, Henry S., 3
 Haight, Fletcher M., 867
 Haight, Samuel S., 866
 Harding, Charles, 728, 807, 816
 Hoyt, George H., 753
 Hubbell, P., 64
 Hunter, Andrew, 728, 807, 816
 Ingersoll, Jared, 678
 King, John G., 599
 Lawrence, John, 417, 469, 488
 Ludlow, Richard, 3
 Mann, William B., 4
 Marsh, Charles, 689
 Maxwell, Hugh, 96
 McCall, Peter, 107
 McDowell, E. T., 107, 398
 O'Byrne, John, 4
 Parker, S. D., 672
 Pickering, John, 599
 Pratt, Joseph D., 4
 Ransford, Patrick T., 3
 Reed, William B., 107, 398
 Rodman, Mr., 96
 Rodman, William D., 515
 Ross, Thomas, 107, 398
 Rush, Samuel, 107, 398
 Saltonstall, Leverett, 599
 Sargeant, Leonard, 79
 Satterthwaite, F. B., 515
 Sennott, George, 810
 Sheldon, Calvin, 78
 Sheppard Furman, 3
 Skinner, Richard, 79
 Smith, Israel, 691, 692, 696
 Spencer, John C., 866
 Stevenson, George, S., 515
 Tracy, Felix, 867
 Van Wyck, M., 69
 Voorhees, Daniel W., 816
 Warren, E. J., 515
 Wellman, D., 79
 Wilkin, Mr., 96
 LEARY, LEWIS
 A Harper's Ferry raider, 702
 LEE, GENERAL ROBERT E.
 Sketch of, 707
 In command of Marines at Harper's Ferry, 707
 LEEMAN, WILLIAM H.
 A Harper's Ferry raider, 702
 LEWIS, CHARLES H.
 Magistrate in examination of Harper's Ferry Raid and John Brown's Trial, 711
 LIBEL
 Trial of William Cobbett for, 675-686
 Trial of Matthew Lyon for, 687, 698
 Trial of Anthony Haswell for, 695-697
 LIVINGSTON, COLONEL JAMES
 Witness in Trial of Joshua H. Smith, 493
 LOCK, JOHN J.
 Magistrate in examination of Harper's Ferry Raid and John Brown's Trial, 711
 LONG, WILLIAM
 Judge in Trial of Lucretia Chapman for murder, 106
 Judge in Trial of Carolino de Mino for murder, 398
 LUDLOW, JAMES R.
 Judge in Trial of Twitchell for murder, 2
 LUDLOW, RICHARD
 Counsel for Commonwealth in Trial of Twitchell for murder, 3

- His opening speech to the jury, 6, 7
- LYON, MATTHEW
 Trial of, for a seditious libel, 687
 The Judge and Counsel, 689
 The argument and evidence, 691, 692
 Judge Patterson's charge to the jury, 693
 The verdict and sentence, 694
- M
- MANN, WILLIAM B.
 Counsel for prisoner in Trial of Twitchell for murder, 4
 His closing speech to the jury, 34-36
- MARSH, CHARLES
 Counsel for Government in Trial of Matthew Lyon for a seditious libel, 689
 Counsel for Government in Trial of Anthony Haswell for a seditious libel, 697
- MARSHALL, CAPTAIN
 Member of Court Martial in Trial of Joshua H. Smith, 488
- MASON, JAMES M.
 Sketch of, 708
 Interviews John Brown, 711-716
- MATLACK, TIMOTHY
 Prosecutor and witness in Trial of Benedict Arnold, 425, 430, 433, 435, 439
- MAXWELL, HUGH
 Counsel for People in Trial of Farquhar and Clark for assault and battery, 96
 His speech to the jury, 98
- MAXWELL, WILLIAM
 Member of Court Martial in Benedict Arnold's Trial, 414
- MERIAM, FRANCIS J.
 A Harper's Ferry raider, 702
- MISTAKEN IDENTITY
 Conviction of the Boorns for the murder of Russel Colvin, who afterwards was discovered alive, 91
- MORTON, MARCUS
 Judge in Trial of Russell for arson, 671
- MOYLAN, COLONEL
 Member of Court Martial in Benedict Arnold's Trial, 415
- MURDER AND MANSLAUGHTER
 Boorn, Stephen and Jesse, 73-98
 Carawan, George W., 514-596
 Chapman, Lucretia, 99-396
 Copeland, John E., 809
 De Mina, Carolino, 397
 Green, Shields, 809
 How, David, 865-878
 Twitchell, George S., 1-67
- MCCALL, PETER
 Counsel for prisoner in Trial of Lucretia Chapman for murder, 107
 His opening address, 164-177
 His closing speech to the jury, 258-317
- MCDOWELL, E. T.
 Counsel for prisoner in Trial of Carolino de Mina for murder, 398
- McKEAN, THOMAS
 Judge in prosecution of William Cobbett for libel, 677
 His charge to the Grand Jury, 678-683
 Biographical note, 454
- NORTH, COLONEL WILLIAM
 Biographical note, 436
- N
- NEWBY, DANGERFIELD
 A Harper's Ferry raider, 702

O

O'BYRNE, JOHN

- Counsel for prisoner in Trial of Twitchell for murder, 4
- His closing speech to the jury, 31-34

P

PARKER, ISAAC

- Judge in Trial of Clark for arson, 599
- His charge to the jury, 657-664
- Sentences prisoner to be hanged, 664-667

PARKER, RICHARD

- Judge in Trial of John Brown for treason, 709
- His recollections of the trial, 710, 723, 807
- His charge to the Grand Jury, 721
- He refuses to delay trial, 731
- He refuses application to examine prisoner's sanity, 737
- Allows Mr. Hoyt of Boston, to appear for prisoner, 753
- Allows postponement, 765
- Orders trial to go on, 766
- Overrules motion for new trial, 800
- Sentences John Brown to be hanged, 802
- Judge in Trial of Coppoc for treason, insurrection and murder, 806
- Judge in Trial of Copeland and Green for insurrection and murder, 810
- Rules that negro cannot be guilty of treason, 812
- Judge in Trial of John E. Cook for treason, insurrection and murder, 816

- Sentences Coppoc, Cook, Green and Copeland to be hanged, 859

PARKER, SAMUEL D.

- Counsel for prisoner in Trial of Russell for arson, 672

PARSONS, BRIGADIER GENERAL SAMUEL H.

- Member of Court in Trial of Major André, 468

PATTERSON, BRIGADIER GENERAL JOHN

- Member of Court in Trial of Major André, 468

PATTERSON, WILLIAM

- Judge in Trial of Matthew Lyon for a seditious libel, 689
- A witness in the case, 692
- His charge to the jury, 693
- Sentences Lyon to fine and imprisonment, 694
- Judge in Trial of Anthony Haswell for a seditious libel, 695
- His charge to the jury, 699
- His sentence, 699

PAULDING, JOHN

- One of the captors of Major André, 467
- Witness in Trial of Joshua H. Smith, 501

PICKERING, JOHN

- Counsel for prisoner in Trial of Clark for arson, 599
- His speech to the jury, 625-641

PICKERING, TIMOTHY

- United States Secretary of State, 676

POISONING

- Trial of Lucretia Chapman for murder by, 99-396
- Trial of Carolino de Mino for murder by, 397

POPKINS, LIEUTENANT COLONEL

- Member of Court Martial in Benedict Arnold's Trial, 415

PRATT, JOSEPH D.

Counsel for prisoner in Trial
of Twitchell for murder, 4
His opening speech to the jury,
19, 20

PROCTOR, COLONEL THOMAS

Witness in Trial of Benedict
Arnold, 435

PUTNAM, SAMUEL

Judge in Trial of Clark for
Arson, 599

Q

QUINN, LUKE

Victim of John Brown's Raid,
724

R

RANSFORD, PATRICK T.

Counsel for prisoner in Trial
of Twitchell for murder, 3

REED, JAMES

Member Philadelphia Council,
417

REED, JOSEPH

President Council of Philadel-
phia, 417

Prosecutes Benedict Arnold for
misdemeanors, 417

REED, WILLIAM B.

Counsel for Commonwealth in
Trial of Lucretia Chapman
for murder, 107

His speech to the jury, 193-258
Counsel for Commonwealth in
Trial of Carolino de Mina for
murder, 398

RIKER, RICHARD

Judge in Trial of Farquhar
and Clark for assault and
battery, 96

His charge and sentence, 98

RODMAN, WILLIAM D.

Counsel for prisoner in Trial
of Carawan for murder, 515
His speech to the jury, 546-567

RODMAN, MR.

Counsel for People in Trial of
Farquhar and Clark for as-
sault and battery, 96

ROSS, THOMAS

Counsel for Commonwealth in
Trial of Lucretia Chapman
for murder, 107

His opening speech, 110-114

His closing speech to the jury,
373-379

Counsel for Commonwealth in
Trial of Carolino de Mina
for murder, 398

RUSH, SAMUEL

Counsel for prisoner in Trial
of Carolino de Mina for mur-
der, 398

RUSSELL, STEPHEN

Trial of, for arson, 671-674

The Judges, 671

The Counsel, 672

The jury, 672

The evidence, 673

The speeches of Counsel, 673

The Judge's charge, 674

The verdict and sentence, 674

The execution, 674

S

ST. CLAIR, MAJOR GENERAL AR-
THUR

Member of Court in Trial of
Major André, 468

SALTONSTALL, LEVERETT

Appointed to defend Clark,
charged with arson, but is
excused, 599

SANFORD, CAPTAIN

Member of Court Martial in
Trial of Joshua H. Smith,
488

SARGEANT, LEONARD

Counsel for prisoner in Trial
of Boorns for murder, 79

- SATTERTHWAITE, FENNER B.
 Counsel for prisoner in Trial
 of Carawan for murder, 515
 His speech to the jury, 546
- SEDITION LAWS.
 See LYON, MATTHEW, HASWELL,
 ANTHONY
- SENNOTT, GEORGE
 Counsel for Copeland and
 Green in their trial for trea-
 son, insurrection and mur-
 der, 811
 Argues that negro cannot be
 guilty of treason, 811
 The plea sustained, 811
 Counsel for Stevens, 817
- SERGEANT, JONATHAN D.
 Biographical note, 454
- SHAW, LEMUEL.
 Judge in Trial of Russell for
 arson, 671
- SHELDON, CALVIN
 Counsel for State in Trial of
 the Boorns for murder, 78
- SHEPPARD, FURMAN
 Counsel for Commonwealth in
 Trial of Twitchell for mur-
 der, 3
 His closing speech to the jury,
 36-38
- SHERBURNE, LIEUTENANT COLONEL
 Member of Court Martial in
 Benedict Arnold's Trial, 415
- SIMS, LIEUTENANT COLONEL
 Member of Court Martial in
 Benedict Arnold's Trial, 415
- SKINNER, RICHARD
 Counsel for prisoners in Trial
 of the Boorns for murder, 79
- SLAVERY. See HARPER'S FERRY,
 JOHN BROWN
- SMALLWOOD, GENERAL WILLIAM
 Member of Court Martial in
 Benedict Arnold's Trial, 414
- SMITH, ISRAEL
 Counsel for prisoner in Trial
 of Matthew Lyon for a sedi-
 tious libel, 692
 Counsel for prisoner in Trial
 of Anthony Haswell for a
 seditious libel, 696
- SMITH, JOHN F.
 Magistrate in examination of
 Harper's Ferry Raid and
 John Brown's Trial, 711
- SMITH, JOSHUA H.
 Trial of, by Court Martial for
 assisting the enemy, 486-513
 The members of the Court,
 487, 488
 The objection as to jurisdic-
 tion overruled, 488
 The evidence for the prosecu-
 tion, 490-508
 The evidence for the prisoner,
 508-512
 The argument, 512
 The verdict of acquittal, 513
- SPENCER, LIEUTENANT COLONEL
 OLIVER
 Member of Court Martial in
 Benedict Arnold's Trial, 415
- STARK, GENERAL JOHN
 Member of Court Martial in
 Benedict Arnold's Trial, 414
 Member of Court in Trial of
 Major André, 468
- STARRY, DR. JOHN D.
 The Paul Revere of the Har-
 per's Ferry Raid, 705
 His evidence in the Trial of
 John Brown, 742
- STEBEN, BARON DE
 Member of Court in Trial of
 Major André, 468
- STEVENS, AARON D.
 His trial and execution, 862

- STEVENSON, GEORGE S.
 Counsel for State in Trial of
 Carawan for murder, 515
 His address to the jury, 516-
 522
- STIRLING, LORD
 Member of Court in Trial of
 Major André, 468
- STRIDER, SAMUEL
 Takes message to Harper's
 Ferry raiders, 706, 772
 His account of the fight, 772
- STUART, GENERAL J. E. B.
 Sketch of, 707
 Leads attack on Harper's Fer-
 ry raiders, 707
 Interviews John Brown, 711-
 716
- SUICIDE
 Of George S. Twitchell, con-
 victed of murder, 67
 Of George W. Carawan after
 conviction of murder, 594
- T
- TAYLOR, STEWART
 A Harper's Ferry raider, 702
- THACHER, GEORGE
 Judge in Trial of Clark for ar-
 son, 599
- THOMPSON, DAUPHIN
 A Harper's Ferry raider, 702
- THOMPSON, WILLIAM
 A Harper's Ferry raider, 702
- TIDD, CHARLES P.
 A Harper's Ferry raider, 702
- TIFFANY, CAPTAIN
 Member of Court Martial in
 Trial of Joshua H. Smith,
 488
- TREASON
 John Brown, 700-805
 John E. Cook, 814-862
 Edwin Coppoc, 806
- Albert Hazlett, 863
 Aaron D. Stevens, 862
- TRIAL
 Prisoner has no right to sit by
 his Counsel, 118
- TURNER, GEORGE W.
 Victim of John Brown Raid,
 724, 759
- TWITCHELL, CAMILLA
 Indicted with her husband for
 murder of Mary E. Hill, 4
 Granted a separate trial, 5, 6
 Acquitted by the jury, 6, *n.*
- TWITCHELL, GEORGE S.
 Trial of, for murder of Mary
 E. Hill, 1-67
 The Judges, 2
 The Counsel for the Common-
 wealth, 3
 The Counsel for the prisoner, 3
 Prisoner and wife granted sep-
 arate trials, 5, 6
 The jury, 6
 Mr. Ludlow's opening speech
 for the prosecution, 6-7
 The witnesses for the Common-
 wealth, 7-19
 Mr. Pratt's opening speech for
 the defense, 19, 20
 The evidence for the defense,
 20-27
 The evidence in rebuttal, 27
 Mr. Hagert's address to the
 jury for the prosecution, 28-
 31
 Mr. O'Byrne's address to the
 jury for the defense, 31-34
 Mr. Mann's address to the jury
 for the defense, 34-36
 Mr. Sheppard's address to the
 jury for the prosecution, 36-
 38
 Judge Brewster's charge to the
 jury, 38-59
 The verdict of guilty, 59

Judge Brewster's judgment
overruling the exceptions, 60-
62

Judge Brewster sentences pris-
oner to be hanged, 62, 63

The fruitless appeals, 63

The prisoner's confession, 64-
66

The suicide of the prisoner, 67

V

VALLANDIGHAM, CLEMENT L.

Interviews John Brown, 711-716

VAN CORTLANDT, COLONEL PHILIP

Member of Court Martial in
Benedict Arnold's Trial, 415

VAN WERT, ISAAC

One of the captors of Major
André, 467

VAN WYCK, MR.

Counsel for People in Trial of
Wood for sending challenge
to fight a duel, 69

VOORHEES, DANIEL W.

Counsel for prisoner in Trial
of John E. Cook for treason,
insurrection and murder, 816
His address to the jury, 834-
859

W

WARREN, EDWARD J.

Counsel for State in Trial of
Carawan for murder, 515

His address to the jury, 567-
588

Attempt of prisoner to kill him
in court, 594

WASHINGTON, GEORGE

Issues order for trial of Bene-
dict Arnold, 415

His reprimand of General Ar-
nold, 463

His letter to the André Court
Martial, 469

André's letter to General Wash-
ington, 471

Investigates the Arnold trea-
son, 486

WASHINGTON, LEWIS W.

Witness in Trial of John
Brown for treason, 749, 755

Witness in Trial of John E.
Cook for treason, 818

WATTS, WILLIAM

Judge in Trial of Lucretia
Chapman for murder, 106

Judge in Trial of Carolino De
Mina for murder, 398

WEISENFELDT, LIEUTENANT COL-
ONEL

Member of Court Martial in
Benedict Arnold's Trial, 415

WELLMAN, D.

Counsel for prisoners in Trial
of the Boorns for murder, 79

WILDE, SAMUEL S.

Judge in Trial of Clark for ar-
son, 599

Judge in Trial of Russell for
arson, 671

His charge to the jury, 674

WILKIN, MR.

Counsel for prisoners in Trial
of Farquhar and Clark for
assault and battery, 96

His speech to the jury, 97

WILLARD, ASHBEL P.

Governor of Indiana and broth-
er-in-law of Cook, the Har-
per's Ferry raider, 815
Sketch of, 815

WILLIAMS, DAVID

One of the captors of Major
André, 467

Witness in Trial of Joshua H.
Smith, 503

WILLIS, THOMAS H.

Magistrate in examination of
Harper's Ferry Raid and
John Brown's Trial, 711

WISE, HENRY ALEXANDER

Sketch of, 708

Appeals made for commuta-
tion of sentence of John
Brown, 802

His letter to Mayor Wood of
New York, 803

WITNESSES

Intoxicated witness, 530

A judge as witness in case be-
fore him, 692

Examination of young child, as
to nature of oath, 188

WITNESSES

Abbott, Joshua, 20

Adams, Henry, 623

Aldrich, Abraham, 868

Allen, Dr., 27

Allstadt, John H., 757

Allstadt, John T., 758, 807

Altgelt, Charles, 25

Armstrong, Carney J., 544

Ayers, John, 868

Bache, Dr. Franklin, 177, 406

Bache, Mrs. Esther, 118, 399

Baker, Louisa, 192

Baldwin, Daniel D., 83

Baldwin, Eunice, 82

Ball, Armistead, 756

Banks, William J., 528

Bantom, Ann, 119, 399

Barr, Robert, 874

Baxter, Mercy, 192

Bell, Benjamin T., 759

Beller, James, 761

Beveridge, David, 436

Blayney, Willis H., 193, 400

Boorn, Amos, 79

Boorn, William, 81, 84

Boudinot, Elias, 441

WITNESSES—Continued.

Boutcher, Benjamin, 126, 198,
399

Boutcher, Ellenor, 192

Bouvier, Sarah, 25

Boyd, Captain E., 499

Bray, Jane P., 622

Bridgman, Green, 532

Bridgman, Thomas, 526, 542,
545

Briggs, David, 84

Brookings, Samuel, 623

Brooks, Israel, 543

Brooks, Romanzo, 872

Brown, Aaron, 873

Brown, Thaddeus, 531

Brua, Joseph A., 760, 807

Burns, Terence, 774

Buckley, Anthony M., 191

Burroughs, Major, 501

Burton, Joshua, 86

Burton, Josiah, 87

Byrne, Terence, 821

Byrns, William, 876

Cahoon, Joseph, 491

Cahoon, Samuel, 490

Campbell, Sarah, 8

Campbell, Sheriff, 755, 767

Carter, Thomas E., 21

Cassidy, Mr., 27

Chambers, Rev. John, 27

Chapman, Lucretia, 188

Chase, Sally, 607

Church, Mrs., 871, 875

Church, Orange, 872

Clark, Betsy, 622

Clark, Eliza, 622

Clark, Mary P., 621

Clark, Moses, 621, 623

Cockerel, Mr., 732

Cleft, Mr., 27

Clemson, Dr. Thos. G., 159

Coates, Dr. Reynell, 150, 403

Collins, Stephen, 437

Colvin, Lewis, 81

WITNESSES—*Continued.*

Colvin, Sally, 82, 89, 90
 Connelly, Lieut., 14
 Cooley, William, 499
 Cornwall, James H., 21
 Crandall, David, 869
 Cross, Albert, 758
 Cross, Reason, 763
 Cross, William, 610
 Crump, John, 22
 Currie, Lind F., 822
 Dana, Dr., 872, 875, 877
 Dangerfield, John P., 767, 769
 Daniel, Albert, 21
 Daniels, Joseph, 20
 Dautrement, Adeline, 868
 Dautrement, Alexander, 868,
 870, 876
 Dautrement, August, 875
 Dautrement, Mrs., 868
 Davidson, Samuel T., 18
 Day, William, 533
 Deacon, Israel, 161
 De Cuesto, Col. E., 180, 187
 De Long, Francis, 874
 Deming, Benjamin, 83
 Devine, Franklin, 20
 Dillingham, Hetty G., 192
 Dilworth, Mr., 27
 Dixon, Joseph, 192
 Dobbins, R. J., 20
 Dolan, Ellen, 20, 21
 Doster, Daniel, 10
 Doty, George, 873
 Downes, Hannah, 604, 605, 606
 Duane, William, 192
 Durand, Elias, 121, 122, 402
 Eisenbauer, Charlotte, 22
 Essler, R. B., 22, 23
 Fanning, Edwin B., 123, 124,
 163
 Farnsworth, William, 84, 87
 Ferguson, Mrs., 89, 90
 Fink, Julius, 23
 Fisler, Leonard, 21

WITNESSES—*Continued.*

Fisler, Phyllis, 21
 Fitz, John, 604
 Fitzgerald, Colonel, 428
 Fling, Mr., 27
 Folhansbee, Ruth, 622
 Franks, Major D. S., 429, 438,
 439, 440
 Freeman, Amos, 869
 French, Joshua, 84
 Fritz, Frederick, 400
 Frothingham, Andrew, 604
 Fuller, Jeremiah, 874
 Gando, Sarah, 193
 Geiger, William, 874
 Gibbs, Thomas, 526
 Gibson, Col., 759
 Gilbert, Joseph, 15, 16
 Gilman, Dudley, 611
 Glading, Andrew, 20
 Greely, John, 623
 Gouge, William M., 191
 Gregg, William, 21, 23
 Griffin, Dr. Bryan H., 522
 Gross, Dr. S. W., 23
 Guillou, Alfred, 122
 Guillou, Constant, 123
 Hamil, Horace, 21
 Hall, John, 440
 Hamilton, Lieut. Col. Alex, 439,
 496, 497
 Hamilton, Mary, 164
 Harrison, Col., 494, 497,
 Harrison, Russel, 871
 Hay, Colonel, 509
 Heath, Simeon, 877
 Hellings, John A., 193
 Henderson, Joseph, 17
 Henkels, George J., 21
 Hickok, Squire, 90
 Hicks, Joshua, 874
 Higgins, Hugh, 871
 Higgins, Jabez, 871
 Hill, Truman, 80, 86, 89
 Hinchman, Jacob, 21

WITNESSES—*Continued.*

Hitchbourn, Mrs. Sophia, 127
Holcomb, Jonathan, 508
Hollingshead, Charles M., 21,
22
Holloway, George, 21
Holt, Mr., 27
Hopkins, John C., 21
Hopkinson, Dr. John P., 148,
402
Horne, George, 21, 23
How, David, 873
Howard, Officer, 11
Howe, Major Gen., 512
Hughes, Robert, 21
Hull, Elias, 870
Hunter, Henry, 759, 762
Hyde, John T., 875
Jacobs, Daniel, 84
Jameson, William, 498
Jarvis, George, 530
Johnson, Mr., 90
Johnson, Michael, 90, 91
Johnson, Thomas, 80, 90, 91
Johnson, William, 810
Jones, Edward B., 18
Jordan, Ruel, 545
Jump, Leonard, 21
Keitz, Isaac, 21
Kelly, Alexander, 758, 759
Kelly, Bartle, 21
Kennedy, Andrew, 810
Kidd, Charles, 21
Kierce, Major, 510
King, Col., 875
Kitzmiller, A. M., 760
Knight, Dr. Allen, 125, 164, 399
Knox, General, 506
Korn, Henry, 191
Labbe, Francis C., 191
La Fayette, Marquis de, 505
Lamb, Col. John, 511
Lambert, Cornelius, 498
Lambert, Henry, 498
Lambert, Lambert, 498

WITNESSES—*Continued.*

Latham, James F., 524, 535
Lawrence, Amos, 87
Lawrence, Jonathan, 508
Lawrence, William, 871, 876
Leidy, Chauncey, 11
Levis, Dr. Richard J., 13
Limes, Samuel, 21
Lincoln, Joseph, 83
Livingston, Col. James, 493
Logan, James, 21
Long, Dr. Sanford, 523
Long, Mr., 20
Lord, Milo, 28
Lupton, Dempsey, 535
Mace, Judith, 622
Magoffin, Joseph, 191
Maloney, Chas., 20
Marsh, Johnson, 83
Marston, Stephen W., 609, 624
Mason, Dr., 732
Mason, Dorset, 525, 535
Matlack, Timothy, 425, 428, 435,
439
Matlack, William, 433
Meade, James P., 21
Merriam, Judge, 876
Merrill, Silas, 84
Middleton, William, 21
Miles, George, 871
Mills, Mayor, 770
Mitchell, Dr. John K., 154, 403
Montgomery, John P., 10
Moore, R. M. G., 542
Morgan, Edward F., 18
Morrell, W. H. G., 12
Morton, Dr., 27
Munson, Cyrus, 89
Murray, Dr. F. F., 24
McArthur, John, 27
McCullough, John, 21, 22
McGowan, Levi, 525
McGowan, Sylvester, 534, 545
McIlvaine, Joseph, 144, 146, 403
McIntosh, Angus, 874

WITNESSES—*Continued.*

McIntosh, John, 874
 McNee, Mr., 20
 Newton, Hiram, 871, 876
 Norris, Joseph, 21
 Northon, Solomon, 536, 538
 Norton, A. A., 875
 O'Brien, Joseph, 611
 Osgood, Elijah, 868
 Outerbridge, Daniel, 21
 Oxford, Mr., 27
 Page, Mr., 27
 Paine, Dr. William, 26
 Palethorpe, Mary, 114
 Palethorpe, Mrs. Sarah, 127
 Pancoast, Dr., 27
 Paul, Asa B., 544
 Paulding, John, 501
 Perkins, Benjamin, 623
 Peters, Ruth, 622
 Pettibone, Abel, 89
 Pettibone, Squire, 90
 Pettingill, Eleazer, 623
 Phelps, Conductor, 743, 755
 Phillips, Dr. John, 124, 399
 Pike, Eliza, 604
 Post, Edward J., 27
 Post, Jonathan, 875
 Pratt, Joel, 86, 87
 Pratt, Squire, 89
 Prince, James, 610
 Proctor, Thomas, 435
 Purdy, Truman, 90
 Raymond, Sam C., 86
 Read, James, 873, 877
 Redfield, Emily, 873
 Redfield, Wilson, 876
 Roach, Chester, 874
 Robinson, Isaac, 623
 Roper, F. S., 536
 Russell, Israel, 774
 Russell, William J., 533
 Sawyer, Carawan, 531
 Seabody, Amos, 877
 Shapleigh, Dr. E. B., 7

WITNESSES—*Continued.*

Shaw, William, 192
 Sheetz, Rev. George, 191
 Sherman, Bradley, 870, 875
 Sherwood, Mrs. Amy, 871
 Sickles, John R., 21
 Simmons, Haughton, 534
 Sinn, Captain, 771
 Skinner, Judge, 79, 80
 Skinner, Richard, 20
 Smith, Ann, 129, 131
 Smith, Edmund, 625
 Smith, Frederick, 83
 Smith, Stephen, 868, 872, 874
 875, 877
 Smith, Thomas H., 528, 532,
 538
 Smith, William J., 545
 Stanwood, William, 606
 Starry, Dr. John D., 742, 810
 Stotesbury, Mr., 27
 Sweet, Ephraim, 624
 Sweetzer, Seth, 610
 Swindell, Albin, 527
 Swindell, A. B., 536
 Swindell, Bartholomew, 529,
 535
 Tabar, Daniel, 876
 Taggart, Detective, 18
 Tallman, John C., 71
 Taylor, Mr., 876
 Thatcher, Amos, 876
 Thompson, Dr., 27
 Thompson, John, 193
 Thompson, Moses, 869
 Thorn, J. S., 21, 22
 Thorp, Mr., 27
 Tilghman, Colonel, 504
 Titus, Mr., 27
 Togno, Dr. Joseph, 178
 Tooley, Henry O., 535
 Topping, Ira H., 527, 543
 Tracy, Henry, 875
 Twitchell, George S., Sr., 23
 Tyson, William, 529, 530

WITNESSES—*Continued.*

Uhrey, Mr., 27
Ustick, Robert, 71
Utter, Joseph, 872
Vallance, Catherine, 192
Vallance, Jane, 192
Van Campen, Moses, 875
Vandergrift, Levi V., 190, 192
Vandergrift, Eliza, 192
Vansant, William, 192
Van Veart, William, 498
Wade, Thomas, 608, 624
Warden, A. B., 18
Warnock, Officer, 14, 28
Washington, Col. Lewis W.,
749, 755, 810, 818
Watkinson, Richard, 120
Wayne, Mr., 28
Wellman, Mr., 89
Whalen, Daniel, 752
Whitman, Josiah, 874
Wickes, Mr., 874
Wilber, Mr., 27
Williams, David, 503
Williams, W. M., 763
Willis, Samuel, 21
Wilson, James, 874
Woart, William, 608, 624
Wood, James B., 403
Wyatt, Joseph, 623
Wyman, William, 83, 89
Zeiss, William, 21, 23

WOOD, FERNANDO

Letter to, from Governor Wise
of Virginia refusing commu-
tation of sentence of John
Brown, 803

WOOD, COLONEL

Member of Court Martial in
Benedict Arnold's Trial, 415

WOOD, JOHN

Trial of, for sending a chal-
lenge to a duel, 68-72
The Judge, 68
The Counsel, 69
The objections to the indict-
ment, 71
The witnesses, 71
The verdict of guilty, 71
The sentence, 72

WOODFORD, GENERAL WILLIAM

Member of Court Martial in
Benedict Arnold's Trial, 414

WRIGHT, CAPTAIN J. A.

Member of Court Martial in
Trial of Joshua H. Smith,
488

WRIGHT, CAPTAIN JACOB

Member of Court Martial in
Trial of Joshua H. Smith,
488



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